

about giving mothers and fathers more time at home with their kids so they can have some leisure time and an opportunity to work with their kids on education, taking a look at the minimum wage is an important element so they don't have to work two or three jobs to try to make ends meet.

There is an important agenda ahead of us. I have touched on only a few items I hope we will consider. Now that we have this change in leadership in the Senate, it is important we address it on a bipartisan basis. It is a unique day in the history of the Senate. It is a unique challenge to all to rise above partisanship and put our country first.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. BUNNING). Without objection, it is so ordered.

#### RECESS

Mr. WARNER. Mr. President, on behalf of the majority leader, TRENT LOTT, I ask unanimous consent that the Senate stand in recess until the hour of 1 o'clock.

There being no objection, at 12 noon, the Senate recessed until 1:02 p.m., and reassembled when called to order by the Presiding Officer (Mr. BUNNING).

The PRESIDING OFFICER. In my capacity as a Senator from Kentucky, I suggest the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### EXECUTIVE SESSION

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed in executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### NOMINATION OF THEODORE BEVRY OLSON, TO BE SOLICITOR GENERAL OF THE UNITED STATES—MOTION TO DISCHARGE

Mr. LOTT. Mr. President, pursuant to the provisions of S. Res. 8, I now move to discharge the Judiciary Committee of the nomination of Ted Olson, to be Solicitor General of the United States.

The PRESIDING OFFICER. Under the provisions of S. Res. 8, the motion

is limited to 4 hours of debate, to be equally divided between the two leaders.

Mr. LOTT. Mr. President, I note that the chairman of the Judiciary Committee, Senator HATCH, is here and ready to proceed. Therefore, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, as you know, we have been trying to make sure that the Justice Department has its full complement of leaders because if there is a more important Department in this Government, I don't know which one it is. There may be some that would rate equally but that Department does more to help the people of this country than any other Department.

One of the most important jobs in that Department is the Solicitor General's job. The Solicitor General is the attorney for the people. He is the attorney for the President. He is the attorney for the Department. He is the attorney who is to argue the constitutional issues. He is the attorney who really makes a difference in this country and who makes the primary arguments before the Supreme Court of the United States of America.

In addition, he has a huge office with a lot of people working to make sure this country legally is on its toes.

In the case of Ted Olson, I am very pleased that we are able to have this motion up at this time. I am pleased that we have colleagues with good faith on the other side who are willing to see that this is brought to a vote today because we should not hold up the nomination for the Solicitor General of the United States of America.

We have had all kinds of Solicitors General. We have had some who have been very partisan but have been great Solicitors General, and we have had some who have hardly been partisan at all and have been weak Solicitors General. We have had some not very partisan at all who have been great Solicitors General. You would have to make an analysis yourself to determine how your own personal philosophy fits.

But in terms of some great ones, there was Archibald Cox, who was never known for conservative politics. He was not very partisan by most Republicans' standards, but he turned out to be an excellent Solicitor General of the United States. We could go on and on.

But let me just say this, that it is interesting to me that Ted Olson has the support of some of the leading attorneys and law professors in this country who have the reputation of being active Democrats.

Let me just mention a few. And I really respect these gentlemen for being willing to come to bat for Ted Olson. Laurence Tribe, the attorney for former Vice President Gore, in *Bush v. Gore*, on March 5, 2001, said:

It surely cannot be that anyone who took that prevailing view—

He is referring to *Bush v. Gore*—

and fought for it must on that account be opposed for the position of Solicitor General. Because Ted Olson briefed and argued his side of the case with intelligence, with insight, and with integrity, his advocacy on the occasion of the Florida election litigation, as profoundly as I disagree with him on the merits, counts for me as a plus in this context, not as a minus. If we set *Bush v. Gore* aside, what remains in Ted's case is an undeniably distinguished career as an obviously exceptional lawyer with an enormous breadth of directly relevant experience.

I have known Laurence Tribe for a long time. I have a great deal of respect for him. I do not always agree with him, but one time he asked me to review one of his books. Looking back on that review, I was a little tough on Larry Tribe to a degree. But I spent time reading his latest hornbook just this last week, read it through from beginning to end—I think it was something like 1,200 pages—it was very difficult reading, and I have to say I came away after reading that hornbook with a tremendous respect for the legal genius of Larry Tribe.

Although I disagree with a number of his interpretations of constitutional law, there is no doubt about the genius and effectiveness of this man, and I think it is a tribute to him that he was willing to stand up for Ted Olson and write it in a letter.

Walter Dellinger is the former Clinton Solicitor General. He is one of the great lawyers of this country. He is a liberal and some thought he was extremely partisan, although I questioned that personally, just like I questioned those who say Ted Olson is partisan. No question that Walter Dellinger is a very strong and positive Democrat, a very aggressive Democrat. But he also is a man of great intelligence and integrity.

On February 5, 2001, Mr. Dellinger said that when Olson served in the Justice Department as the head of the Office of Legal Counsel, he "was viewed as someone who brought considerable integrity to the decisionmaking."

Virtually everybody who worked with Ted Olson at the Office of Legal Counsel—in fact, all that I know of—said he was a man of integrity who called them the way he saw them, who abided by the law and did not allow partisan politics to enter into any thinking. There are two offices where partisan politics could work to the detriment of our country.

One is the Office of Legal Counsel, which he handled with distinction, with ability, with fairness, in a nonpartisan way. The other is the Office of the Solicitor General, which I assert to this body he will handle in the same nonpartisan way. He will certainly try to do what is constitutionally sound and right. And he will represent the Congress of the United States in these

battles. He may not always agree with the Congress of the United States when we are wrong, but you can at least count on him doing what is right and trying to make the best analysis and do what he should.

Now, Beth Nolan is a former Clinton White House counsel and Reagan Department of Justice, Office of Legal Counsel attorney. Beth is a considerable Democrat, and she is someone I respect. We have had our differences, but I have to say that she deserves respect. In a September 25, 1987, letter signed by other Department of Justice lawyers she had this to say:

We all hold Mr. Olson in a very high professional and personal regard because we believe he made his decisions with integrity after long and hard reflection. We cannot recall a single instance in which Mr. Olson compromised his integrity to serve the expedience of the Reagan administration.

That is high praise coming from Beth Nolan, a strong Democrat who has served both in the White House Counsel's office and at Justice in the office of Legal Counsel.

One of the most esteemed first amendment lawyers in the country, a strong Democrat, one of the men I most respect with regard to first amendment interpretations and first amendment constitutional challenges, is Floyd Abrams—again, I submit, a liberal Democrat.

On March 4, 2001, he had this to say about Ted Olson:

I have known Ted since we worked together on a Supreme Court case, *Metro Media v. San Diego*, 20 years ago. I have always been impressed with his talent, his personal decency, and his honor. He would serve with distinction as a Solicitor General.

This is one of the greatest lawyers in the country, a man of distinction himself who has great judgment, who is a leading trial lawyer in this country.

And that is what Floyd Abrams had to say about Ted Olson.

These are all Democrats. How about Harold Koh, former Clinton administration Assistant Secretary of State. On February 28, 2001, he had this to say:

Ted Olson is a lawyer of extremely high professional integrity. In all of my dealings with him I have seen him display high moral character and a very deep commitment to unholding the rule of law.

That is high praise from a former Clinton administration high-level employee. All of these are Democrats, leading Democrats, some partisan Democrats, but who have found Ted Olson to be a man of honor and integrity.

One of the greatest lawyers in the country is Robert Bennett, attorney for former President Clinton. Robert Bennett is known by virtually everybody in this body for having been an independent counsel himself, and having done his jobs with distinction. Nobody doubts he is one of the greatest lawyers in this country. Nobody doubts

that the two Bennett brothers are personalities about as compelling as you can find.

Well, Robert Bennett happens to be a Democrat, and a leading Democrat, one of the great attorneys in this country. And here is what the attorney for former President Clinton had to say on May 15, 2001:

While I do not have any personal knowledge as to what role if any Mr. Olson played in the Arkansas Project or the full extent of his relationship with the *American Spectator*, what I do know is that Ted Olson is a truth teller and you can rely on his representations regarding these matters. He is a man of great personal integrity and credibility and should be confirmed.

I am submitting to this body that people of good will, that people who want good government, people who want the best of the best in these positions at the Justice Department, ought to vote for Ted Olson regardless of their political affiliation, regardless of the fact that Ted Olson handled *Bush v. Gore* and won both cases before the Supreme Court—something that some of my colleagues bitterly resent. They should vote for him regardless of the fact that, yes, he has been a strong Republican—some think too partisan of a Republican. But he has a reputation of being a person who calls them as he sees them, an honest man of integrity. This is backed up by these wonderful Democratic leaders at the legal bar, Laurence Tribe, Walter Dellinger, Beth Nolan, Floyd Abrams, Harold Koh, Robert Bennett, just to mention six terrifically strong Democrats. If anybody wants to know, they ought to listen to people in the other party who have every reason to be partisan on nominations in some ways, but who are not allowing partisanship to enter into hurting the career or hurting the opportunity of Ted Olson to serve as Solicitor General.

I personally know Ted Olson. I have known him for many years. I have seen him courageously take on client after client across the ideological spectrum and do a great job in each case for his clients. This is an exceptional lawyer. He is one of the exceptional people in our country. He has the capacity and the ability to be a great, and I repeat great, Solicitor General of the United States. He is respected by the Supreme Court before whom he has appeared at least 15 times.

And for those who might not remember, he was the attorney for George W. Bush in *Bush v. Gore*, and made two arguments before the Supreme Court, both of which he handled with dexterity, with skill, with decency, and with intelligence.

I have to say he deserves this job, he deserves not having people play politics with this position. In my opinion, he will make a great Solicitor General of the United States. Let me just dispel some of the allegations surrounding this nomination and explain why I believe further delay is unwarranted.

First, there have been allegations that Mr. Olson has misled the committee concerning his involvement in something called the Arkansas Project and his representation of David Hale. Let me say that I listened to my colleagues on the committee when the Washington Post article first appeared, and delayed a vote, against my better judgment actually, until we weighed the allegations because it was fair to do so.

My colleagues wanted that, they deserved that, and we delayed it so we could weigh those allegations. Then I took several days and extensively reviewed the testimony during the hearings, his answers to written questions, and his subsequent letter. I am convinced that those responses showed no inconsistencies or evidence that Mr. Olson misled or was less than truthful to the committee anyway. Rather, they show him to be forthright and honorable.

Although I have not seen any discrepancies or inconsistencies in Mr. Olson's testimony and answers, I have tried to respect the concerns of other members of this committee and joined the distinguished ranking Democratic member in looking further into this matter and asking further clarifying questions from the Office of the Independent Counsel. We look into some insinuations against Mr. Olson concerning his involvement with the Arkansas Project and his legal representation of David Hale.

In order to verify Mr. Olson's statements, the committee has had access to a great volume of materials, including all relevant portions of the Shaheen Report that could be provided by law, letters from key individuals involved with the Arkansas Project, and just yesterday, at Senator LEAHY's request, a copy of David Hale's testimony at another trial, and more information from the Office of Independent Counsel. These together simply confirm Mr. Olson's statements and show that there is no need for additional investigations.

Now, I would like to relate some of my findings in investigating the record and alleged inconsistencies. With regard to the Arkansas Project, Mr. Olson repeatedly stated that he learned about the project while he was a member of the board of directors and that he did not know about it prior to his service on that board. He also consistently stated that he learned of the project in 1997. In an early response he stated that he became aware of it in "1998, I believe." He later clarified that it was in 1997 and has consistently maintained that he learned of the project in 1997. Each of the quotations used by Senator LEAHY in his so-called "summary of discrepancies" confirms this fact and does not provide, despite the title of the document, any real discrepancies in Mr. Olson's testimony.

Key individuals intimately involved with the Arkansas Project have written letters to the committee confirming Mr. Olson's account of events. These individuals include James Ring Adams, Steven Boynton, Douglas Cox, Terry Eastland, David Henderson, Michael Horowitz, Wladyslaw Pleszczynski, and R. Emmett Tyrell.

From their different positions, each person corroborates the fact that Mr. Olson was not involved with the origination or management of the Arkansas Project. R. Emmett Tyrell, the editor-in-chief of the magazine, stated unequivocally that Mr. Olson's statements with regard to his involvement with the project are "accurate and thus truthful."

Terry Eastland, former publisher of the *American Spectator*, conducted a review of the project and stated he "found no evidence that Mr. Olson was involved in the project's creation or its conduct." Other letters make similar statements about Mr. Olson's lack of involvement before 1997. All of them are consistent with his testimony, and they are not rebutted by any other credible evidence.

Mr. President, let me summarize for my colleagues. We have Mr. Olson's sworn testimony along with the statements of key players in the project and numerous letters by Democrats and Republicans who praise Mr. Olson's integrity and honesty, against the lukewarm allegations of one former staffer who has recently backed away from his remarks. Even if Mr. Brock's factual allegations were true, they do not contradict Mr. Olson's testimony.

Now the second possible allegation against Mr. Olson is that, contrary to his testimony, he might have received payment for his representation of David Hale. Mr. Olson has repeatedly answered questions about this representation. He testified that he received no money for this representation, although he had expected to be paid.

Then in a letter of May 9, 2001, in response to further questions, he again stated that he received no payments for his representation of David Hale. He wrote, "Neither I nor my firm has been compensated by any other person or entity for those services—although I am not aware of any legal prohibition against another person or entity making such a payment." He gave this report and I urge my colleagues to read it. I have extra copies of this and other recent material with me, if any colleague cares to further review it.

Now, I have seen no, let me repeat, no evidence suggesting this testimony is not accurate. Mr. Olson responded to questions about these issues at his hearing and in three sets of written questions—each time his answers have been clear and consistent.

But you don't just have to take Mr. Olson's word for it. His answers are

clearly supported by the conclusions reached by Mr. Shaheen and reviewed independently by two respected retired federal judges. Under a process jointly approved by the Independent Counsel and Attorney General Janet Reno, Mr. Shaheen was appointed to review the allegations concerning alleged payments to David Hale.

In order to get all the facts, Mr. Shaheen was given authority to utilize a grand jury to compel production of evidence and testimony. In addition, another important element of this independent review process was that the results of the investigation were to receive a final review—not by the Independent Counsel or Attorney General Reno—but by two former federal judges Arlin Adams and Charles Renfrew. At the conclusion of their review, they issued a statement on July 27, 1999, in which they concurred with the conclusions of the Shaheen Report that "many of the allegations, suggestions and insinuations regarding the tendering and receipt of things of value were shown to be unsubstantiated or, in some cases, untrue."

And if the Shaheen Report was not sufficient, Senator LEAHY requested a transcript of David Hale's testimony at the trial of Jim Guy Tucker and Jim and Susan McDougal, apparently because of accounts of that testimony in Joe Conason and Gene Lyons' book, "The Hunting of the President." The Office of the Independent Counsel has graciously made David Hale's trial transcript available to the committee in response to Senator LEAHY's May 14, 2001 letter. A review of the transcript clearly shows further that Mr. Olson's testimony was accurate.

In the transcript, David Hale testified that Ted Olson was retained to represent him before a congressional committee. When asked, "Who pays Mr. Olson to represent you?" Mr. Hale replied, "I do." Mr. Hale did not say that he or anyone on his behalf actually paid Mr. Olson.

The transcript of the trial is fully consistent with Mr. Olson's testimony regarding the Hale representation—namely that he never received payment for the representation, that Mr. Hale intended to pay for these services, and that no one else was responsible for the payments. Mr. Hale also testified that he first contacted Mr. Olson in 1993 in connection with a possible congressional subpoena, and that Olson did represent him in 1995–1996. Mr. Olson wrote in his letter (May 9, 2001) that he was "ultimately engaged by Mr. Hale and undertook that representation sometime in late 1995 or early 1996."

Thus, with regard to David Hale, there is no evidence from any source that Mr. Olson received payment for this representation. Mr. Olson's testimony, David Hale's testimony, the Independent Counsel report, and review of the matter by two former federal

judges all confirm that Mr. Olson received no payment for his brief representation of David Hale. I should also note that we send further questions on this matter to the Office of the Independent Counsel, whose responses have been completely consistent with Mr. Olson's testimony.

Again, let me say that I appreciated and respected the need for members of this committee to satisfy themselves about the integrity of executive branch nominees. That is why I had delayed an initial committee vote. The committee had ample opportunity to verify the statements of Mr. Olson—no discrepancies have appeared, nor is there any credible evidence to refute any part of his testimony.

We have the statements of individuals involved with the Arkansas project. Staff members of the committee have been able to view the Shaheen report and the trial testimony of David Hale. I know that internal information has been requested from the *American Spectator* magazine, but I am concerned that such demands may tread on precious first amendment prerogatives of the press that we should all be careful to protect, even though it frustrates all of us from time to time. And I know that Democratic staff have interviewed Mr. Brock.

I believe that the extensive and decisive record before us shows that Mr. Olson has been truthful and forthright on all counts.

The facts and conclusions I have just discussed—that there are no discrepancies between Ted Olson's statements and Senator LEAHY's allegations—beg the question: What is all this fuss really about?

Perhaps it is because some may believe that Mr. Olson is too partisan to serve as the Solicitor General. Nothing could be further from the truth. Ted Olson's career has been as broad as it has been deep. Mr. Olson has advocated for a wide variety of organizations and has associated with people of many different political ideologies.

While it is true that Mr. Olson has performed legal work for the conservative *American Spectator*, to focus myopically on that is to ignore Mr. Olson's distinguished work for many other media organizations including the *New York Times*, the *Washington Post*, *Times-Mirror*, the *Los Angeles Times*, *Dow Jones*, *LA magazine*, *NBC*, *ABC*, *CNN*, *Fox*, *Time-Warner*, *Newsday*, *Metromedia*, the *Wall Street Journal*, and *Newsweek*. What does this list show about Ted Olson? Is this the kind of clientele that would seek after a single-issue zealot? No way. This list demonstrates clearly that smart people with a variety of views on public matters turn to—and trust—Ted Olson.

Similarly, it is possible to pay too much attention to one person's apparent dissonant opinion when there is a chorus of other harmonized voices.

Now, I have to concede that Ted Olson's supporters include a lot of well-known partisans.

For example, President Clinton's lawyer, Bob Bennett, said that "Ted Olson is a truth-teller" and he is "confident that [Ted Olson] will obey and enforce the law with skill, integrity and impartiality." A similar sentiment was expressed by President Clinton's White House Counsel, Beth Nolan. And Vice President Al Gore's lawyer, Laurence Tribe, has publically announced his support for Ted Olson's confirmation as Solicitor General. Floyd Abrams, who has known Ted Olson for 20 years, and who is no right-wing conspirator, said he has "always been impressed with [Ted Olson's] talent, his personal decency and his honor." President Clinton's Assistant Secretary of State for Democracy, Human Rights and Labor, Harold Koh, called Ted Olson "a lawyer of extremely high professional integrity." And William Webster said Ted Olson is "honest and trustworthy and he has my full trust."

These names demonstrate that Ted Olson's experience, character and associations have a tremendous breadth and depth. It is time for this body to do the right thing and favorably vote to confirm Mr. Olson as the Solicitor General.

Mr. President, I would also like to make a few more brief comments on Mr. Olson's nomination to set the record straight.

First, there has been repeated insinuation and accusation that Mr. Olson has misled the committee concerning his involvement with the so-called Arkansas Project and his representation of David Hale.

I, responding to concerns by some Democrats, listened and delayed the vote May 10 until the committee reviewed the record and weighed the allegations.

Since the Washington Post story broke, I and my staff have extensively reviewed Mr. Olson's testimony during his hearing, his answers to written questions, and his subsequent letters. I am convinced that these responses show no inconsistencies or evidence that Mr. Olson misled or was less than truthful to the committee in any way. Rather they show him to be forthright and honest.

In order to verify Mr. Olson's statements, the committee has had access to a great volume of materials, including all relevant portions of the Shaheen Report that could be provided by law, letters from key individuals involved with the Arkansas Project, and at Senator LEAHY's request, a copy of David Hale's testimony at another trial.

We have had access to more material from the Office of the Independent Counsel, a number of questions that Senator LEAHY and I jointly asked that office and have received the responses.

All of this material, and the overwhelming evidence already on the record, continue to support Mr. Olson's veracity and complete candor before the committee. There are none, nor has there been, any specific evidence supporting allegations against Mr. Olson.

Key individuals intimately involved with the Arkansas Project have written letters to the committee confirming Mr. Olson's account of events. A host of respected and distinguished lawyers, judges, private and public figures who have worked with Ted Olson have written in and/or called the committee with their support for Mr. Olson's nomination and have vouched for his integrity and candor. These include the two respected attorneys who argued against Mr. Olson in each of the two Supreme Court arguments in *Bush v. Gore*.

From their different positions, each person corroborates the fact that Mr. Olson as not involved with the origination or management of the Arkansas Project. R. Emmett Tyrell, the editor-in-chief of the magazine, stated unequivocally that Mr. Olson's statements with regard to his involvement with the project are "accurate and thus truthful." Terry Eastland, former publisher of the *American Spectator*, conducted a review of the project and stated he "found no evidence that Mr. Olson was involved in the project's creation or its conduct."

The only evidence that appears to have any possible conflict with Mr. Olson's sworn testimony and the written communications of the key players in the Arkansas Project comes from David Brock, a former writer for the *American Spectator*, who in last Wednesday's New York Times, appeared to tone down his original account, saying, "It was my understanding that all of the pieces dating back to 1994 that dealt with investigating scandals pertaining to the Clintons, particularly those that related to his time in Arkansas, were all under the Arkansas Project." He did not say that he was sure, or that Mr. Olson knew about the project. Indeed, on a television program last Thursday evening, Mr. Brock said he had no specific recollection about speaking specifically about the Arkansas Project in the presence of Mr. Olson.

Moreover, Mr. Brock apparently suggested to one paper that James Ring Adams would have a similar view. But Mr. Adams, one of the lead writers for the project, wrote the committee that "Mr. Olson had absolutely no role in guiding my development of stories for the magazine or in managing my work."

So, we have Mr. Olson's sworn testimony along with the statements of key players in the project and numerous letters by Democrats and Republicans who praise Mr. Olson's integrity and honesty, against the luke-warm allega-

tions of one former staffer who has recently backed away from his remarks. Even if Mr. Brock's factual allegations were true, they do not contradict Mr. Olson's testimony.

The other allegation against Mr. Olson is that, contrary to his testimony, he might have received payment for his representation of David Hale. He testified that he received no money for this representation, although he had expected to be paid.

There is no evidence suggesting this testimony is not accurate. Mr. Olson responded to questions about these issues at his hearing and in three sets of written questions—each time his answers have been clear and consistent.

His answers are clearly supported by the conclusions reached by Mr. Shaheen and reviewed independently by two respected retired federal judges. Under a process jointly approved by the Independent Counsel and Attorney General Janet Reno, Mr. Shaheen was appointed to review the allegations concerning alleged payments to David Hale. At the conclusion of their review, they issued a statement noting "many of the allegations, suggestions and insinuations regarding the tendering and receipt of things of value were shown to be unsubstantiated or, in some cases, untrue." I released the redacted portion of this Shaheen report which relates to Mr. Olson to the public. Read the report and its conclusions—and the Independent Counsel's responses to the numerous questions we have sent him regarding the report—it speaks for itself. This is not even a case revolving on the definition of what "is" is. There simply is no "there" there.

As I have noted before, we are at a period where we need to rebut the public's beliefs that we only engage in politics and don't care about the merits of nominee qualifications. We need to gain the public's trust in our government back. I am deeply concerned that what has been happening here might appear to be an effort to paint Mr. Olson's occasional political involvement as the entirety of his career and character, and as reported in the press, possibly as retribution for the man who argued and won the Supreme Court case in *Bush v. Gore*.

Now, I don't think that that is true. I know my colleagues and respect their views. But, I hope that we can begin debating the merits of this nomination and take all of the support and testimony on this man's obvious and overwhelming qualifications and his high integrity into account as we determine our votes for his confirmation.

Mr. President, I urge my colleagues to judge the record. Judge the man for his qualifications and integrity. And I urge my colleagues to listen to Laurence Tribe, to David Boies, to read the Shaheen report and responses from the Office of the Independent Counsel, to listen to Robert Bennett—President

Clinton's lawyer, to everyone who has worked with and known Ted Olson. I urge you to vote to confirm our next Solicitor General.

Mr. President, let me say a few words about Mr. Olson's qualifications.

Ted Olson is one of the most qualified people ever nominated to be Solicitor General. He has had an impressive 35-year career as a lawyer—including four years as the Assistant Attorney General in charge of the Justice Department's Office of Legal Policy under Ronald Reagan.

The job of the Solicitor General is to make litigation policy decisions. The Solicitor General represents the United States in all cases before the United States Supreme Court, and it is up to the Solicitor General to approve all appeals taken by the United States from adverse decisions in the lower federal courts. It is important to have a skillful and competent advocate in that position.

Ted Olson has argued 15 cases in the U.S. Supreme Court. For most lawyers, a single Supreme Court argument would be considered the zenith of their career.

Ted Olson has a reputation for considering all viewpoints before making decisions. Walter Dellinger, who served as acting Solicitor General under President Clinton, told the Washington Post that, "If Ted runs the SG's office the way he ran OLC, he will give deference to views other than his own in making his final decision."

Ted Olson's Supreme Court arguments concerned issues of great importance to our country, including limits on excessive jury verdicts, the effect of statutes of limitations, caps on punitive damages, the meaning of the Federal False Claims Act, racial and gender classifications, and whether telecommunications companies must provide surveillance capabilities to law enforcement agencies.

In addition to his role representing clients, Ted Olson has also worked to reform our civil justice system by writing and speaking on various topics, and he helped advise the government of Ukraine on drafting a new Constitution in the mid-1990's.

Ted Olson also has superb academic qualifications. He graduated from the Boalt Hall School of Law at the University of California at Berkeley, where he earned a spot in the prestigious Order of the Coif and was a member of the law review.

I have no doubt that Ted Olson will prove to be one of the best Solicitor Generals our country has ever had. Given the extraordinary quality of the people who have held that post, this is no small compliment.

With that, I yield the floor and suggest the absence of quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. FITZGERALD). Without objection, it is so ordered.

The Senator from Vermont.

Mr. LEAHY. I thank the Chair. Mr. President, I thank the Senator from Utah, the chairman of the Judiciary Committee.

If I can have the chairman's attention just for a moment, I assume we are not looking for specific times and speakers on this matter but will go back and forth in the usual fashion as people arrive. Is that agreeable?

Mr. HATCH. That is agreeable. It is my understanding we have 4 hours equally divided. Mr. President, how much time have I used?

The PRESIDING OFFICER. The Senator has used 29 minutes.

Mr. LEAHY. Mr. President, for anybody who wants to speak, following the normal unofficial procedure, as people are available, we can go back and forth, side to side.

I note that I have no objection to proceeding to the motion to discharge the nomination of Ted Olson to be Solicitor General. I mention this because I want Senators to understand. We had a divided vote in the committee, and with a divided vote in the committee, because of the procedures of the Senate, I am sure we could have either bottled it up for some time in committee or for some time here. I do not want to do that. I think there should be a vote one way or the other. We have had too many examples in the past few years of nominations being bottled up that way.

On this one, I have concerns about Mr. Olson, but I am agreeable to having a vote up or down on his nomination. In fact, I say to my friend, the distinguished chairman of the Senate Judiciary Committee, that we also have before us the nominations of Mr. Dinh to be head of the Office of Policy Development of the Justice Department and Mr. Chertoff to be head of the Justice Department's Criminal Division. I am perfectly agreeable to roll-call votes on them, too, and will, to notify Senators, vote for them as I did in committee. Of course, that is something that has to be scheduled.

Mr. HATCH. Will the Senator yield?

Mr. LEAHY. Yes.

Mr. HATCH. I, for one, am grateful because they are good people. I missed what the Senator said. He wants to have a vote?

Mr. LEAHY. I want to have a vote on all three of these. I realize that is entirely up to the body. I am perfectly willing to have votes on all three of them. I point out, with respect to Mr. Dinh and Mr. Chertoff, I voted for them in committee, even though, as everybody knows, they are very conservative Republicans and were heavily involved in a congressional investigation of the

former President and of matters in Arkansas.

Mr. HATCH. If the Senator will yield, I do not mean to keep interrupting. I want to express my gratitude that he is willing to go ahead with this and the Senate can vote on these nominees because I want to get that Justice Department—and I know the distinguished Senator from Vermont does also—up and running in the fullest sense we can. That is my only interest in this, other than I do like all three of these nominees. I thank my colleague. Forgive me for interrupting.

Mr. LEAHY. I appreciate the compliment.

Mr. Dinh and Mr. Chertoff were heavily involved in what I thought was a misguided investigation, not by them but by Members of Congress who conducted it against former President Clinton and others in Arkansas. However, I believe they followed the directions of Members of Congress, many of whom are no longer here, for a number of reasons. I will vote for them and urge their confirmation when the time comes.

I mention this because there seems to be some in the public, some among what I call the more conservative editorialists, who think there is going to be some kind of payback on the Democrats' part for the number of nominees who were held up during the Clinton administration by the Republican majority. I think it makes far more sense to look at nominations one by one on the merits.

There is no question if the roles were reversed, if somebody of Mr. Dinh's and Mr. Chertoff's background had been appointed by the last administration following their investigations of Republican Presidents and my understanding and what I have seen in the last few years, they would have been held up. I do not believe in doing that.

I told Attorney General Ashcroft—in fact, I told him earlier today—we intend to move these forward. We are moving forward most of the nominations in the Department of Justice a lot faster than they were 4 years ago in the Clinton administration by the same Senate but under different control.

I hope this may be an indication that things will move forward on their merits and not on partisanship. I urge all Senators who wish to debate to come to the floor without delay and participate.

After the motion to discharge and proceed to the nomination, I expect the Senate will proceed to vote promptly on the Olson nomination. I know Senator LOTT and Senator DASCHLE have been working toward that goal. I agree with them on it.

I will, however, express, as every Senator has a right to express his or her feelings towards or against each of these three nomination nominees, why I will vote against Ted Olson.

The Solicitor General fills a unique position in our Government. The Solicitor General is not merely another legal advocate whose mission is to advance the narrow interests of a client or merely another advocate of the President's policies. The President has people appointed on his staff or in his Cabinet to advance his policies. That is absolutely right. That is the way it should be. Whoever is President should have somebody who can advance his positions no matter whether they are partisan or not, and there are positions provided—in fact, hundreds of millions of dollars' worth of positions are provided to the President to do that.

The Solicitor General is different. The Solicitor General is not there to advance the partisan position of anybody, including somebody who is President. The Solicitor General is there to advance the interests of the United States of America, of all of us—Republican, Democrat, or Independent.

The Solicitor General must use his or her legal skills and judgments to higher purposes on behalf of the laws and the rights of all the people of the United States.

The Solicitor General does not advance a Republican or Democratic or Independent position. The Solicitor General advances the positions of the United States of America. In fact, at his hearing, Mr. Olson acknowledged—and I will use his words:

The Solicitor General holds a unique position in our government in that he has important responsibilities to all three branches of our government. . . . And he is considered an officer of the Supreme Court in that he regularly and with scrupulous honesty must present to the Court arguments that are carefully considered and mindful of the Court's role, duty, and limited resources. As the most consistent advocate before the Supreme Court, the Solicitor General and the lawyers in that office have a special obligation to inform the Court honestly and openly. The Solicitor General must be an advocate, but he must take special care that the positions he advances before the Court are fairly presented. As Professor Drew Days said to this committee during his confirmation hearing 8 years ago, the Solicitor General has a duty towards the Supreme Court of "Absolute candor and fair dealing."

Those words of Ted Olson's are words that I totally agree with. He has stated the position of the Solicitor General. He has stated it accurately. We must look at his record to see, having talked the talk, whether he walked the walk.

The Senate must carefully review nominations to the position of Solicitor General to ensure the highest levels of independence and integrity, as well as legal skills. Indeed, the Solicitor General is the only government official who must be, according to the statute, "learned in the law." We appoint a lot of people, we confirm a lot of people, but nothing in the law says they have to be "learned in the law," but for the Solicitor General it says that. The Solicitor General must argue

with intellectual honesty before the Supreme Court and represent the interests of the Government and the American people for the long term, and not just with an eye to short-term political gain.

The Senate must determine whether a nominee to the position of Solicitor General understands and is suited to this extraordinary role.

It is with the importance of this position in mind that I approached the nomination of Ted Olson to serve as Solicitor General of the United States. From my initial meeting with him in advance of the April 5, 2001, hearing and thereafter, I have been assessing this nomination against the responsibilities of that important office.

At the outset, I raised with Mr. Olson my concern that his sharp partisanship over the last several years might not be something that he could leave behind. After review of his testimony both orally and in answers to written questions, I have become doubly concerned that Mr. Olson has not shown a willingness or ability to be sufficiently candid and forthcoming with the Senate so that I would have confidence in his abilities to carry out the responsibilities of the Solicitor General and be the voice of the United States before the United States Supreme Court. In addition, I am concerned about other matters in his background.

I will lay out in a much more lengthy statement for the RECORD, my concerns, but let me talk more briefly now about my concerns about Mr. Olson's candor before the committee about his involvement with the American Spectator and the Arkansas Project. His initial responses to my questions at his hearing prompted concern that the committee might not have heard a candid and complete accounting from Mr. Olson.

Rather than respond directly and say all that he did do in connection with those matters, Mr. Olson chose to respond by misdirection and say what he did not do. Frankly, in this case, and under the questions he was asked, there is a world of difference between what he did not do and what he did do. He initially described his role as extremely limited as a member of the board of directors of the American Spectator Educational Foundation and implied that he was involved only after the fact, when that board conducted a financial audit and terminated the Arkansas Project activities in 1998.

Mr. Olson has modified his answers over time, his recollection has changed, and he has conceded additional knowledge and involvement. His initial minimizing of his role appears not to be consistent with the whole story. Because his responses over time left significant questions and because of press accounts that contradicted the minimized role to which he initially admitted, I wanted to work with Sen-

ator HATCH before the Judiciary Committee voted on this nomination to have the committee perform the bipartisan factual inquiry needed to set forth the facts and resolve all questions and concerns about Mr. Olson's answers.

I wanted to have us do the bipartisan fact finding that we always do when such issues come up.

Indeed, Senator HATCH postponed one committee vote on Mr. Olson's nomination on May 10 and admitted that "some legitimate questions" have arisen and that "legitimate issues" were involved. He said that after an article in the Washington Post indicated that Mr. Olson's role at American Spectator and the activities of the Arkansas Project were more than just as a member of the board of directors in 1998 to which a financial audit was provided.

My friend from Utah did not agree to that limited inquiry before the committee voted on Mr. Olson's nomination, but with the constructive assistance of the leaders and their staff, we were able to make progress over the last week.

Let me describe just a few of the discrepancies in Mr. Olson's evolving statements to this committee. These are discrepancies that give me pause.

First, Mr. Olson has minimized his knowledge of the Arkansas Project and its activities through—well, word games and definitional ploys. At the hearing, I asked him the direct question: "Were you involved in the so-called Arkansas Project at any time?" Mr. Olson responded by saying what he did not do, and with reference to his membership on the board of directors:

As a member of the board of directors of the American Spectator, I became aware of that. It has been alleged that I was somehow involved in that so-called project. I was not involved in the project in its origin or its management. . . . I was on the board of the American Spectator later on when the allegations about the project were simply that it did exist.

A carefully crafted answer, like somebody spoiling or somebody maneuvering a kayak through the rocks in a whitewater rapids.

Over the past several weeks and several rounds of questions, Mr. Olson has expanded his initial response to admit that he and his firm provided legal services in connection with the matter, that he had discussions in social settings with those working on Arkansas Project matters, and that he himself authored articles for the magazine paid for out of Scaife's special Arkansas Project fund.

Mr. Olson and his supporters then began to engage in a word game over what the meaning of "Arkansas Project" is. His law partner Douglas Cox told the Post that Olson testified that he, "did not know there was this special fund set up by Scaife to finance this Arkansas fact work."

That might have explained Mr. Olson's testimony if he had said that at

the time he was writing the articles and giving legal advice and talking about these matters with the staff, he had been unaware that those conversations were in connection with what came to be known as the Arkansas Project. In other words, writing and giving legal advice and talking about it, he didn't know what it was for. I think he is far too good a lawyer for that. But that is not what Mr. Olson testified. In fact, he admitted that he became aware of the Arkansas Project at least by 1998, and then changed that testimony to sometime in 1997.

He said he was a member of the board that received an audit of the Scaife funds. So by 2001, his knowledge of the Arkansas Project and the funding by Scaife was undeniable.

Second, evidence uncovered during the committee's limited bipartisan inquiry following the committee vote, raises serious question about whether Mr. Olson accurately denied any role in the "origin" of the Arkansas Project by failing to respond correctly to direct questions about a meeting in his law office held in late December, 1993 when this project was getting organized. Not in 2001 but 1993.

Third, Mr. Olson has apparently downplayed his involvement in the development and direction of Arkansas Project stories, perhaps to avoid any inconsistency with his initial representation to the committee that he was not involved in the management of this project.

According to a published report in the Washington Post on May 20, 2001, the report to which Senator HATCH referred when he indicated that "legitimate questions" had been raised, David Brock told Post reporters that "Olson attended a number of dinner meetings at the home of R. Emmett Tyrrell, Jr., president and chairman of the Spectator, which were explicitly brainstorming sessions about the Arkansas Project."

While Mr. Olson refused to respond to this allegation, his law partner, Douglas Cox, who worked on the Spectator account, conceded that Olson attended such dinners, but that "did not mean that he was aware of the scope of the Arkansas Project and the Scaife funding."

David Brock has also indicated that Mr. Olson was "directly involved in the Arkansas Project, participating in discussions about possible stories and advising the magazine whether to publish one of its most controversial stories, about the death of Clinton White House deputy counsel Vincent Foster." According to the account in the Post, Mr. Olson told Mr. Brock that, "while he didn't place any stock in the piece, it was worth publishing because the role of the Spectator was to write Clinton scandal stories in hopes of 'shaking scandals loose.'"

That is an interesting position for a lawyer to take: Print a story you know

not to be true, hoping that by printing untruths you will somehow bring forward truths. That is not what I was taught in law school, certainly not in our legal ethics courses.

In his response to Senator HATCH, Mr. Olson did not deny Mr. Brock's account head on.

Instead, he wrote that he told Mr. Brock that the article did not appear to be libelous or to raise any legal issues that would preclude its publication, and that he was not going to tell the editor-in-chief what should appear in the magazine.

The Washington Post also reported that others said that project story ideas, legal issues involving the stories, and other directly related matters were discussed with Mr. Olson by staff members and at dinner parties of Spectator staff and board members. The reaction from Mr. Olson's supporters was swift. On May 15, 2001, Chairman HATCH shared with the committee a letter he obtained from the two men quoted denying the specific words in the Post story but not denying that they talked to the Post reporters.

In a blatant effort to undermine Mr. Brock's powerful, first hand recollection of Mr. Olson's participation in and contributions to the activities of the Arkansas Project, Mr. Tyrrell also submitted a statement that Mr. Brock was not a part of the Arkansas Project.

Mr. Brock, in reply, submitted strong contradictory evidence to the Tyrrell statement and supplied the committee with multiple Arkansas Project expense reports, expense reports, I might note, which remain unrefuted and which Mr. Brock states, "clearly show that I was reimbursed thousands of dollars by the Project for travel, office supplies, postage, and the like."

Taken as a whole, Mr. Olson was clearly involved and participating both professionally and socially in the work of the American Spectator and its Arkansas Project. There is absolutely nothing illegal about this involvement and participation, which makes me wonder, why not be forthcoming and honest about it? But it shows a larger role in these activities than Mr. Olson initially portrayed.

Mr. Olson also minimized his role in the Arkansas Project and the American Spectator by failing to give complete information about the amount of remuneration he has received for his activities on their behalf when he was first asked. He told us on April 19 that he was paid from \$500 to \$1,000 for his articles that appeared in the American Spectator magazine. Yet, we find out in the Washington Post on May 10 that his firm was paid over \$8,000 for work that was used in just one of those articles.

In addition, the Post reported that over \$14,000 was paid to Mr. Olson's law firm and attributed to the Arkansas Project.

When he was asked during his hearing about an article he had coauthored that was published under the pseudonym—I want to make sure I get this right—"Solitary, Poor, Nasty, Brutish and Short" in the magazine he did not indicate that "the magazine hired [his] firm to prepare" such materials and to perform legal research on the theoretical criminal exposure of the President and Mrs. Clinton based on press accounts of their conduct. I, for one, thought Mr. Olson had defended his writings as matters of personal first amendment political expression, an absolute right that he and all of us have. Certainly, I had no idea from his testimony at his confirmation hearing that this article was part of his and his firm's ongoing legal representation of American Spectator Educational Foundation, that it was a commissioned piece of legal writing, paid for by a grant from conservative billionaire Richard Mellon Scaife.

I am now left to wonder whether his article that was so critical of the Attorney General and the Justice Department was as he described them at his hearing the "statements of a private citizen," or another richly paid for political tract.

Again, he, like all of us, can write any kind of a political tract he wants. He, like all of us, can make statements critical of anybody he wants. He can even make outlandish charges. But let's be honest about what we have done when testifying under oath before the Judiciary Committee.

His supporters repeat the mantra that even if he was paid with Arkansas Project funds, Mr. Olson would not have known that. What they leave out is a necessary qualifier "at the time he received the payment." By the time he came to the committee and testified, in answer to direct questions, he had become privy to the internal audit of the Arkansas Project. In fact, he says he became privy to that 3 years ago in 1998. That audit and his knowledge as a board member of the extent of the Arkansas Project that it revealed rendered Mr. Olson's testimony in April, 2001, less than complete.

Having now conceded his involvement in these matters, something he did not do initially, the question arises: How extensive was that involvement as a lawyer? That is why I asked at least for production of his firm's billing records for legal services rendered to the American Spectator, but I was stonewalled on that request. Mr. Olson asserted attorney-client privilege; but he did not offer to cooperate by producing nonprivileged copies of those records.

Every lawyer in this place knows what is privileged and what is not, what falls under attorney-client privilege and what does not. And he did not even want to produce those things that clearly fall outside the attorney-client



privilege. In fact, such nonprivileged records have been produced in connection with other Government inquiries. Certainly in the last 6 years, documents have been produced by the bush-el to the same Judiciary Committee during other investigations.

As part of the bipartisan inquiry undertaken after the committee vote on this nomination, we became aware of this fact. The independent counsel review and report we were able to read—that was only a small part of it—indicates that requests were made to Mr. Olson and his law firm for billing records for any client that had received Scaife foundation grants between 1992 and 1998 in order to ascertain whether there had “been an indirect method to compensate (the law firm) for its unpaid representation of Hale.” That would be David Hale.

Just as here, Mr. Olson’s law firm initially invoked attorney-client privilege but realized that ultimately they had to give what were nonprivileged billing records for Mr. Olson. And they showed Mr. Olson’s representation of both David Hale and the American Spectator. But the independent counsel was unable to forward those records in response to the bipartisan, joint request for them by Senator HATCH and myself.

So Senator HATCH and I then sent a joint request to Mr. Olson’s firm requesting information about the total amount of fees paid by the American Spectator to the firm. Remember, the implication was there really was not anything there. Today, we were informed that the amount paid was not \$500 to \$1,000 per article the committee was first told by Mr. Olson. Instead, it was for legal services performed \$94,405.

I am not a bookkeeper. I was a mid-dling math student. But like most Vermonters, I can count. There is quite a bit of difference between \$500 to \$1,000 and \$94,405.

Mr. Olson has tried to distance himself from the most controversial aspects of the Arkansas Project in its activities to publicize allegations of wrongdoing about the Clintons in Arkansas. Mr. Olson stated that he “represented the American Spectator in the performance of legal services from time to time beginning in 1994 \* \* \* those legal services were not for the purpose of conducting or assisting in the conduct of investigations of the Clintons.”

Yet, we find out he was paid over \$8,000 to prepare a chart outlining the Clintons’ criminal exposure as research for a February 1994 article Mr. Olson co-authored against the Clintons entitled, “Criminal laws Implicated by the Clinton Scandals: A partial list.”

Finally, Mr. Olson has testified he simply does not recall who contacted him to represent David Hale.

This is a man who has as sharp a mind as just about anybody I have met

around here, but he does not recall who contacted him to represent David Hale, a central part of this whole inquiry.

So when I asked Mr. Olson at his April 5 hearing how he came to represent Mr. Hale he started by saying, “[t]wo of [Hale’s] then lawyers contacted me and asked . . .” A few seconds later Mr. Olson said:

[o]ne of his lawyers contacted me—I can’t recall the man’s name—and asked whether I would be available to represent Mr. Hale in connection with that subpoena here in Washington, D.C. They felt that they needed Washington counsel with some experience dealing with a congressional investigation. I did agree to do that. Mr. Hale and I met together.

Even in his May 9 letter, Mr. Olson asserts that he, “cannot recall when [he] was first contacted about the possibility of representing Mr. Hale.” He indicates that he believes, “that [he] was contacted by a person or persons whose identities [he] cannot presently recall sometime before then regarding whether I might be willing to represent Mr. Hale if he needed representation in Washington.”

The Washington Post reported that David Henderson said that he introduced Hale to Olson. Interestingly, David Henderson apparently signed a statement on May 14 indicating that in his view he broke no law while implementing the Arkansas Project. But what he does not say and what he does not deny is that he was the person who introduced David Hale to Mr. Olson.

The role that David Henderson played in introducing David Hale to Mr. Olson is apparently corroborated by several other witnesses who have spoken to the American Prospect in a story released today.

It now strikes me as strange that a man as capable as Mr. Olson with his vast abilities of recall could not remember the name of David Henderson, if Mr. Henderson was, in fact, involved in setting up that representation.

And it strikes me as doubly strange when the bipartisan inquiry conducted after the committee vote on this nomination uncovered evidence that Mr. Olson was able to recall who introduced him to David Hale just a couple of years ago when he was asked the same question.

The Hale independent counsel report indicates that in 1998 Mr. Olson could supply the name of the person who referred David Hale to him for legal representation.

It leads one to easily wonder whether Mr. Olson’s failure to recall the name, David Henderson, in the year 2001 had something to do with him not wanting to indicate the connection to such a central figure in the Arkansas project.

Some would say, what importance is there to this? Does it really matter whether Mr. Olson accurately and fully described his role in the American Spectator and the Arkansas project? This nomination is for the office of So-

licitor General. It is important for two reasons, both of which go to the fitness of the nominee to serve as Solicitor General.

The principal question raised by the nomination of Mr. Olson to this particular position—remember, this is a position that is supposed to be non-political, nonpartisan, representing all Americans of whatever political allegiance they have, or whether they have none. The question is whether his partisanship over the last several years in connection with so many far-reaching anti-Clinton efforts to mark Mr. Olson as a thorough-going partisan who will not be able to check his partisan political instincts at the door to the Office of the Solicitor General.

Now, the reason I ask that is we have another nominee before us, Michael Chertoff, and we asked some of these same questions about Michael Chertoff. In that case, the questions were answered, the doubts dissipated. Instead of a 9-9 vote, Mr. Chertoff, had a roll-call vote in committee and it was unanimous; Republicans and Democrats across the political spectrum voted for him. There were Doubts, but the questions about Mr. Chertoff disappeared. But the doubts and questions about Mr. Olson have grown over time.

Had Mr. Olson been straightforward with the committee, had he conceded the extent of his involvement in anti-Clinton activities and given the kinds of assurances that Mr. Chertoff did about his upcoming responsibilities, I could very easily be supporting his confirmation.

Actually, when I first met with Mr. Olson, and even at his hearing before we had a chance to go through all of his answers and see the areas where they didn’t show consistency, I had hoped and expected to be supporting him. In fact, I remember saying to someone in my office at that time that I assumed I would be supporting him. I expected to be able to give him the benefit of the doubt.

In light of the deference I normally accord a President’s executive branch nominees, I fully expected to be voting for this nomination, just as I voted for so many by the five previous Presidents, both Republican and Democrat.

In the wake of the hearing, the series of supplemental responses we have received, and the unanswered questions now in the public record about Mr. Olson’s involvement in partisan activities like the Arkansas project, I have many doubts.

We also have a question of candor and straightforwardness. I have not had the sense from his hearing onward that Mr. Olson has been truly forthcoming with either me or with the committee. My sense is that for some reason he chose from the outset to try to minimize his role in connection with the activities of the American Spectator, that he has sought to characterize it in the most favorable possible



light, that he has sought to conclude for us rather than provide us with the facts and let us conclude how to view his activities.

As I review the record and the initial nonresponsiveness, lack of recall, corrections when confronted with specifics, I am left to wonder what happened to "absolute candor and fair dealing," the touchstone that Mr. Olson himself says is necessary for a Solicitor General. In concluding my May 4, 2001, letter to Mr. Olson, I noted:

The credibility of the person appointed to be the Solicitor General is of paramount importance. When arguing in front of the Supreme Court on behalf of the United States Government, the Solicitor General is expected to come forward with both the strengths and weaknesses of the case, to inform the Court of things it might not otherwise know, and to be honest in all his or her dealings with the Court. I expect that same responsiveness and cooperation from nominees before this Committee.

My expectation had been to support him. Please understand, this is not the role of a lawyer advocate in our legal system. I have been an advocate of the court, both at the trial level and at the appellate level. I have been there both for the prosecution and for the defense. In private practice, I was there both for the plaintiffs and defendants. You fight like mad. You make as strong a case for your client as you can. That is fine.

The Solicitor General is different. The Solicitor General is sometimes referred to as the tenth justice. He is expected to tell the Court these are the strengths of my case, but let me tell you also where the weaknesses are of my case. If a matter is left out, or there might be a weakness in the case, he is duty-bound to bring it forward to the Court's knowledge because, if confirmed, Mr. Olson is not a lawyer advocate for just one client because that client is the United States of America—all 270 million of us. I want to be sure that our Nation's top lawyer will see the truth and speak the truth fully to the Supreme Court and represent all of our best interests in the matters over which the Solicitor General exercises public authority.

I have confidence that Mr. Olson is an extremely capable lawyer. Of course, I do. Do I have confidence that he can set aside partisanship to thoroughly and evenhandedly represent the United States of America before the Supreme Court? I do not have such confidence, and I cannot vote for him.

Mr. President, how much time remains for the Senator from Vermont?

The PRESIDING OFFICER. There are 76 minutes remaining.

Mr. LEAHY. Mr. President, the Solicitor General fills a unique position in our Government. The Solicitor General is not merely another legal advocate whose mission is to advance the narrow interests of a client, or merely another advocate of his President's policies.

The Solicitor General is much more than that. The Solicitor General must use his or her legal skills and judgment for higher purposes on behalf of the law and the rights of all the people of the United States.

At his hearing, Mr. Olson acknowledged that:

The Solicitor General holds a unique position in our Government in that he has important responsibilities to all three branches of our Government. . . . And he is considered an officer of the Supreme Court in that he regularly and with scrupulous honesty must present to the Court arguments that are carefully considered and mindful of the Court's role, duty, and limited resources. As the most consistent advocate before the Supreme Court, the Solicitor General and the lawyers in that office have a special obligation to inform the Court honestly and openly. The Solicitor General must be an advocate, but he must take special care that the positions he advances before the Court are fairly presented. As Professor Drew Days said to this committee during his confirmation hearing 8 years ago, the Solicitor General has a duty towards the Supreme Court of "absolute candor and fair dealing."

Republicans and Democrats have carefully reviewed nominations to the position of Solicitor General to ensure the highest levels of independence and integrity, as well as legal skills. Indeed, the Solicitor General is the only government official who must be, according to the statute, "learned in the law." The Solicitor General must argue with intellectual honesty before the Supreme Court and represent the interests of the Government and the American people for the long term, and not just with an eye to short-term political gain. I ask unanimous consent to have printed in the RECORD a recent article by Professor Lincoln Caplan on the role of the Solicitor General.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, May 18, 2001]  
THE PRESIDENT'S LAWYER, AND THE COURT'S  
(By Lincoln Caplan)

NEW HAVEN.—The job of solicitor general is one of the most eminent in American law. Part advocate, the S. G. as he is called, represents the United States before the Supreme Court, where the federal government is involved in about two-thirds of all cases decided on the merits (as opposed to procedural grounds). Part judge, he chooses when the government should appeal a case it has lost in a lower court, file a friend-of-the-court brief, or defend an act of Congress. Most S.G.'s have influenced rulings in landmark cases; many have become judges; four have risen to the Supreme Court. Yet for most of this tiny office's history since it was created in 1870, the S.G. drew little public or even scholarly attention.

Today, however, the nomination of Theodore Olson to be S.G. is headline news, as is evident from the attention to the Senate Judiciary Committee's 9-9 vote on it yesterday, a split along party lines. In the past 40 years, the courts have become forums for resolving social questions, and the docket of the Supreme Court has become defined by the most divisive issues. During the past 15 years, es-

pecially, as the line between law and politics has been increasingly hard to draw, the choice of a solicitor general has become more important politically than that of any legal figure except for the attorney general or a Supreme Court justice.

The choice of Mr. Olson makes this point sensationally because his legal accomplishments are so marked by ideology. As a young Justice Department official under Ronald Reagan, he made his name as an adamant defender against Democrats in Congress who were trying to probe a Republican environmental scandal. He has litigated matters like a major anti-affirmative-action case in Texas, brought by conservative activists to overturn liberal precedents. He has served on the board of the conservative American Spectator magazine, for which he wrote biting, anonymous criticism of Bill and Hillary Clinton. He has helped lead the Federal Society, a conservative legal organization that is now a formidable force in the Bush Administration. Most significantly, he was the winning attorney in the Supreme Court case of *Bush v. Gore*. During Mr. Olson's Senate confirmation hearing, Richard Durbin, Democrat of Illinois, said to him, "I can't find any parallel in history of anyone who was as actively involved in politics as you and went on to become solicitor general."

For the S.G.'s office, the Olson nomination frames a debate that was sparked during the Reagan years and remains undecided.

The traditional view holds that the solicitor general has a unique role in American law and functions as "the 10th justice." Justice Lewis Powell, for example, argued that the S.G. has a "dual responsibility"—to represent the president's administration but also to help the Supreme Court develop the law in ways that serve the long-term interests of the United States. (To some experts, the S.G.'s duty to defend federal statutes amounts to a third responsibility, to Congress.) Rex Lee, the first solicitor general in the Reagan administration, was an unequivocal conservative. Yet he was forced to quit by colleagues who thought he was too restrained in his advocacy of the president's social agenda. Famously, he said that it would have been wrong for him to "press the administration's policies at every turn and announce true conservative principles through the pages of my briefs." He was, he stated, "the solicitor general, not the pamphleteer general."

A more recent view is that the S. G. should act as a partisan advocate for policies of the president, not as the legal conscience of the government. Rather than defending a position of independence within the administration, Mr. Lee's successor, Charles Fried, told the Senate that "it would be peevish and inappropriate for the solicitor general to be anything but cheerful" while supporting the views and interests of the president who appointed him.

The latter outlook is much easier to defend. The separation of powers among the three branches of government makes it simplest to regard the solicitor general as a spokesman for the executive branch: the concept of a dual responsibility (or a triple one) confounds the notion of checks and balances.

Yet for decades the former outlook prevailed, and it is supported in the only official statement about the S. G.'s role, issued in 1977 by the Justice Department. The Supreme Court has bestowed on the solicitor general a special status—seeking the S. G.'s advice in many cases where the government isn't even a party. And the S. G. has reciprocated by fulfilling a special role in court.

If a private lawyer wins a case he thinks he should have lost, he accepts his victory in judicious silence. But when the solicitor general prevails on grounds that he considers unjust (for example, when evidence supporting a criminal verdict is slight), he may "confess error" and recommend that the Supreme Court overturn the decision. To Archibald Cox, one of the country's admired S. G.'s, surrendering victory in some cases helps justify the reliance that the Supreme Court places on the solicitor general: this practice demonstrates that the solicitor general's approach to arguing the government position is likely to be developed with the nation's long-term interests in mind.

Both views of the role require candor in the S. G. That's why last week the Senate Judiciary Committee postponed its vote on Mr. Olson after reports surfaced that he had given misleading testimony, during his confirmation hearing, about his role in a project run by *The American Spectator* to find damaging information about the activities of the Clintons in Arkansas. The question of misleading testimony is reminiscent of a rebuke to Mr. Olson by an independent counsel who investigated whether he had lied to Congress in testimony during his days as a Reagan defender. While "literally true," the counsel stated, that testimony was "potentially misleading."

Whether he is approved as solicitor general by the full Senate or the Bush administration must choose someone else for the post, a deeper question endures: Is it now acceptable to define the job as that of an outright partisan? Or should the S. G. remain an advocate for the nation's long-term interests whose duty to the rule of law goes beyond allegiance to the political views of the administration?

Mr. LEAHY. The Senate must determine whether a nominee to the position of Solicitor General understands and is suited to this extraordinary role. From Benjamin Bristow in 1870, to William Howard Taft and Charles Evans Hughes, Jr., from Robert Jackson to Archibald Cox, Thurgood Marshall and Erwin Griswold, we have had extraordinary people serve this country as our Solicitors General. It is with the importance of this position in mind that I approached the nomination of Ted Olson to serve as Solicitor General of the United States. From my initial meeting with him in advance of the April 5, 2001, hearing and thereafter, I have been assessing this nomination against the responsibilities of that important office.

Initial Concerns. At the outset, I raised with Mr. Olson my concern that his sharp partisanship over the last several years might not be something that he could leave behind. After review of his testimony both orally and in answers to written questions, I have become doubly concerned that Mr. Olson has not shown a willingness or ability to be sufficiently candid and forthcoming with the Senate so that I would have confidence in his abilities to carry out the responsibilities of the Solicitor General and be the voice of the United States before the United States Supreme Court. In addition, I am concerned about other matters in his background.

I will detail below the source of my concerns about Mr. Olson's candor before the Committee about his involvement with the *American Spectator* and the "Arkansas Project." His initial responses to my questions at his hearing prompted concern that the Committee might not have heard a candid and complete accounting from Mr. Olson. Rather than respond directly and say all that he did do in connection with those matters, Mr. Olson chose to respond by misdirection and say what he did not do. He initially described his role as extremely limited as a member of the Board of Directors of the *American Spectator* Educational Foundation and implied that he was involved only after the fact, when that Board conducted a financial audit and terminated the "Arkansas Project" activities in 1998.

Need for Committee Inquiry. Mr. Olson has modified his answers over time, his recollection has changed, and he has conceded additional knowledge and involvement. His initial minimizing of his role appears not to be consistent with the whole story. Because his responses over time left significant questions and because of press accounts that contradicted the minimized role to which he initially admitted, I wanted to work with Senator HATCH before the Judiciary Committee voted on this nomination to have the Committee perform the bipartisan factual inquiry needed to set forth the facts and resolve all questions and concerns about Mr. Olson's answers.

Indeed, Senator HATCH postponed one Committee vote on Mr. Olson's nomination on May 10 and admitted that "some legitimate questions" have arisen and that "legitimate issues" were involved. He said that after a May 10 article in the *Washington Post* indicated that Mr. Olson's role at *American Spectator* and the activities of the "Arkansas Project" were more than just as a member of the Board of Directors in 1998 to which a financial audit was provided.

When I did not hear from Senator HATCH about how he wished to proceed to resolve those legitimate questions, I sent him a letter on May 12 proposing a course of action to avoid any undue delay. After I sent my proposal, Senator HATCH and I talked about it. He said he would be getting back to me and I held out hope that we would be able to proceed in a fair and bipartisan way to get to the facts and let all Members of the Committee make their own assessment before they voted upon the nomination.

Instead, Senator HATCH was apparently just waiting for a letter from Mr. Olson, which arrived accompanied by short, solicited statements from a few selected supporters so that he could unilaterally declare the matter closed. None of these statements could serve as a substitute for the Committee

doing its job, and, instead of playing catch-up to the press, exercising the due diligence that the American people expect from the Judiciary Committee in our review of a nominee for a position sometimes called the "Tenth Supreme Court Justice." In essence, the question I wished to examine was whether Mr. Olson fully informed the Committee in response to direct questions about his role in the *American Spectator* and the "Arkansas Project." This was never a question of whether there was illegal conduct.

Committee Vote. Rather than proceed in a bipartisan way to establish the factual record needed to evaluate Mr. Olson's characterization of his activities, Senator HATCH rejected even an inquiry of limited duration that would have involved jointly interviewing seven individuals, who had already been quoted or referred to by the press, with contemporaneous knowledge from the time in question, and gathering relevant background documents, which had also been referred to in the press. He pressed forward with a vote in Committee on this nomination that resulted in a 9-9 tie vote.

While usually a nomination on such a vote would not be reported to the Senate, circumstances have changed that prompt me to give my consent for Mr. Olson's nomination to be considered. With the constructive assistance of both Leaders and their staffs, we were able over the past week to conduct a limited, bipartisan inquiry on the matters of concern raised by Mr. Olson's responses to the Committee.

Limited Bipartisan Inquiry: Following the 9-9 vote on this nomination in the Judiciary Committee on May 17, 2001, Senator HATCH and I released a joint statement the next day indicating that we were discussing how to move forward on the nomination and to address specific concerns that Members might have prior to the confirmation vote. As part of this inquiry, Committee staff reviewed, on a bipartisan basis, a heavily-redacted version of the report of the Office of Special Review (OSR), prepared by Michael Shaheen and May 21, 2001 responses by Independent Counsel Robert W. Ray, including to questions posed jointly by Senators HATCH and me. One of these letters is in response to a query from Senator HATCH sent unilaterally and without notice to me. On May 22, Senator HATCH and I jointly released for review by all the members of the Senate the two May 21 letters received from Mr. Ray and the redacted OSR report—with additional redactions to remove the names of specific individuals other than the nominee.

In addition, Senator HATCH released a May 22 letter to colleagues that included 71-pages of *American Spectator*-related records, which were anonymously delivered to my Judiciary Committee and which shed light on how the

"Arkansas Project" came about. I should note that within minutes of discovery of these documents, copies were made and delivered to Senator HATCH's Judiciary Committee office.

Finally, the Committee staff made efforts to conduct an interview of Ronald Burr, the former publisher of the *American Spectator* and a key witness to the events in question. In fact, Mr. Burr was the person at the magazine instrumental in obtaining the grant funds from conservative billionaire Richard Mellon Scaife. Among the anonymous-source documents released by Senator HATCH is a December 2, 1993 letter from Richard M. Scaife to R. Emmett Tyrrell, as President and Chairman of the American Spectator Educational Foundation, stating that "[t]his grant is in response to Ron Burr's October 13, 1993 letter and various conversations with us." In addition, Mr. Burr was the person to whom Mr. Olson sent his February 18, 1994 letter confirming the terms of his representation of the American Spectator and his January 30, 1996 letter confirming his acceptance of a membership on the board of the American Spectator Educational Foundation. Unfortunately, Committee staff were unable to speak to Mr. Burr, despite his willingness to do so because the American Spectator refused to release him from the confidentiality provision in his severance agreement for purposes of Mr. Burr's cooperation with the Committee's inquiry.

#### CONTRADICTIONS AND DISCREPANCIES

Let me describe just a few of the discrepancies in Mr. Olson's evolving statements to this Committee. These are discrepancies that give me pause.

First, Mr. Olson has minimized his knowledge of the "Arkansas Project" and its activities through word games and definitional ploys. At the hearing, I asked him the direct question: "Were you involved in the so-called Arkansas Project at any time?" Mr. Olson responded by saying what he did not do, and with reference to his membership on the Board of Directors: "As a member of the board of directors of the *American Spectator*, I became aware of that. It has been alleged that I was somehow involved in that so-called project. I was not involved in the project in its origin or its management. . . . I was on the board of the *American Spectator* later on when the allegations about the project were simply that it did exist." (Tr. at pp. 200-01).

Why is there reason to suspect that Mr. Olson's role was not limited to that of a Member of the Board to which a financial audit was provided in 1998? A good deal of the basis is provided by subsequent answers provided by Mr. Olson himself. In April, 2001, his testimony was initially that he was not involved, except as a Member of the Board. Over the past several weeks and

several rounds of questions, Mr. Olson has expanded his initial response to admit that he and his firm provided legal services in connection with the matter, that he had discussions in "social" settings with those working on "Arkansas Project" matters, and that he himself authored articles for the magazine paid for out of Scaife's special "Arkansas Project" fund.

Compare, for example, Mr. Olson's initial response with his subsequent responses in which he modified his original answer. In his May 9, 2001 letter to me, he stated: "First, I will address again your questions concerning my involvement in the 'Arkansas Project.' My only involvement in what has been characterized as the 'Arkansas Project' was in connection with my service to the Foundation as a lawyer and member of its Board of Directors." [Underlining added for emphasis.] Mr. Olson initially left out any reference to his role as a lawyer.

Mr. Olson and his supporters then began to engage in a word game over what the meaning of "Arkansas Project" is. His law partner Douglas Cox told the Post that Olson testified that he, "did not know there was this special fund set up by Scaife to finance this Arkansas fact work." That might have explained Mr. Olson's testimony if he had said that at the time he was writing the articles and giving legal advice and talking about these matters with the staff, he had been unaware that those conversations were in connection with what came to be known as the "Arkansas Project." But that is not what Mr. Olson testified. In fact, he admitted that he became aware of the "Arkansas Project" at least by 1998, and then changed that testimony to sometime in 1997. He said he was a Member of the Board that received an audit of the Scaife funds. So by 2001, his knowledge of the "Arkansas Project" and the funding by Scaife was undeniable.

On this particular definitional point, Mr. Olson has minimized his role in and his knowledge of how the Scaife money was spent by the Foundation, even though he was on the board. It strains credulity that he did not know given the size of the Scaife grants—especially when another board member has described briefings to the board on the Arkansas Project and its financing as "routine." [Peter Hannaford, *Washington Post*, May 15, 2001]. Moreover, board minutes for a meeting on May 19, 1997, which were included in the anonymous-source documents released by Senator HATCH on May 22, indicate that the board—at least at that meeting—discussed a number of financial matters, such as the foundation's equity holdings, operating reserves, employment contracts, and commitments from the Scaife Foundation. (Doc. pp. 44-46).

This is certainly not the first occasion that Mr. Olson has played this

word game. Independent Counsel Robert W. Ray notes in response to a request from Senator HATCH, that in a memorandum of interview, Mr. Olson acknowledged that "he may have been asked questions by [names redacted] about things that they were doing in Arkansas, but Olson did not know anything about the 'Arkansas Project'" and "he was not involved in the direction of funding of that project." Mr. Olson was precise in his denial of knowledge and involvement to refer to the term "Arkansas Project." One unnamed person interviewed by the OSR investigation stated, however, that "the 'Arkansas Project' was not a term used by [name redacted] or anyone else at the *American Spectator* to his knowledge." (May 21 Ray Letter, n. 2).

But even accepting Mr. Olson's strict definition of the "Arkansas Project," which apparently requires knowledge of the Scaife funding source, rather than the broader use of the term to describe the general activities of Clinton scandal mongering underway at the *American Spectator* from 1993 through 1998, his involvement was more than he described. On Friday, May 11, 2001, the *New York Times* reported that Mr. Olson said that when he joined the Board of Directors of the *American Spectator* the "Arkansas Project" was underway and that when he found out about it, he helped shut it down. In fact, Mr. Olson's testimony to the Committee was that he was on the Board, "when the allegations about the project were simply that it did exist. The publisher at the time, under the supervision of the board of directors, hired a major independent accounting firm to conduct an audit to report to the publisher and therefore to the board of directors with respect to how that money was funded. . . . As a result of that investigation, the magazine, while it felt it had the right to conduct those kind of investigations, decided that it was not in the best interest of the magazine to do so. It ended the project. It established rules to restrict that kind of activity in the future. . . ."

In a subsequent written response, Mr. Olson wrote: "Neither the report by Mr. [Terry] Eastland nor the Board found anything unlawful about the manner in which funds had been spent, which as I recall, had all been for the purpose of investigating and reporting information of legitimate public interest regarding a high level public official. However, because of the controversy surrounding the matter, and issues regarding whether the journalistic products that resulted had been worth the amount spent, the project was ended and the Board adopted new guidelines to govern investigative journalistic efforts in the future."

The letter is interesting on these points, but only adds to the questions

rather than resolving what in fact happened. Mr. Eastland adds another perspective and indicates a much more active role for Mr. Olson than had previously been acknowledged in representations to the Committee. Mr. Eastland writes that in June, 1997, disagreements arose between the magazine's "then publisher" and Richard Larry, the executive director of the Scaife foundations.

Mr. Eastland continues: "At that time, Mr. Tyrrell, who was also chairman of the board, asked Mr. Olson, a board member since 1996, for his assistance in resolving the dispute." This role has never previously been acknowledged by Mr. Olson or Mr. Tyrrell. Mr. Eastland then asserts that "Mr. Olson agreed that a review of the project was necessary." He continues: "Throughout my review, which included an accounting of the monies spent on the project as well as an examination of its management, methods, and results, I had Mr. Olson's strong support." So, according to Mr. Eastland, Mr. Olson had a much more extensive role in deciding how the American Spectator would "resolve" the dispute, contributed to the decision to conduct a review and played a strong supportive role in the review.

If Mr. Olson is now taking credit for finding out about the "Arkansas Project" and for shutting it down, as reported by the New York Times on May 11, 2001, that would be a modification of those responses and his initial response that he was not involved in the project, "in its origin or its management," to his later formulation that he did, "not recall giving any advice concerning the conduct of the 'Project' or its origins or management," to his later formulation that he was not involved in its, "inception, organization or ongoing supervision," or alternatively, that his, "only involvement in what has been characterized as the 'Arkansas Project' was in connection with my service to the Foundation as a lawyer and member of its Board of Directors."

Of course, there is much left unsaid by Mr. Eastland on this and other topics. For example, he does not indicate how he came to be the publisher of the American Spectator and replaced Ronald Burr in November 1997 or whether Mr. Olson had a role in his recruitment or in that action of replacing the publisher. In this regard, Mr. Olson did not indicate to the Committee in his submitted responses to our questionnaire that he had been an officer at the American Spectator Educational Foundation. In written follow up questions, I drew his attention to passages in *The Hunting of the President* (Id.) in which the authors of that published work indicate that Mr. Olson was named an officer of the organization on October 1997. Mr. Olson's response is uncertain and equivocal indicating that he had a,

"vague recollection that [he] served as a temporary secretary for the purpose of that meeting, and perhaps a subsequent one, something that I did not recall at the time I answered the initial written questions."

Second, evidence uncovered during the Committee's limited bipartisan inquiry following the Committee vote, raises serious question about whether Mr. Olson accurately denied any role in the "origin" of the "Arkansas Project" by failing to respond correctly to direct questions about a meeting in his law office held in late December, 1993 when this project was getting organized.

The anonymous-source documents released by Senator HATCH reveal that following requests by the American Spectator as early as October 13, 1993, Richard M. Scaife on December 2, 1993 "approved a new grant to The American Spectator Educational Foundation, Inc." and forwarded the first installment of the grant. (Doc. p. 19). Thus, by late December 1993, the Scaife funding was in place at the American Spectator to support the activities that would come to be called the "Arkansas Project."

With the Scaife funding secured, the OSR Report confirms that Mr. Olson met in his office in late December 1993 with people associated with the American Spectator—Ronald Burr, maybe David Henderson, Stephen Boynton and David Hale. (OSR Report, pp. 78, 82, 90; May 21, Joint Q. 5). "[A]t least seven individuals were identified as having possibly been in attendance." (Id.) Mr. Olson recalled this meeting in 1998 during the OSR investigation, stating that "in approximately December 1993" he hosted a meeting in his office, that the meeting was "about the possibility that he provide counsel to the magazine," that David Hale attended this meeting, and that "the participants may have discussed Hale's need for a 'Washington lawyer' to represent him if he was called to testify before any congressional committees." (OSR Report, pp. 28, 78).

While the description of what discussions may have taken place at this meeting is "incomplete and inconsistent" with "inconsistencies not resolved by the Shaheen investigation" (May 21 Ray Response to Joint Q. 5), the OSR report contains the following descriptions from other participants in the meeting: "while Hale may have been a topic of conversation during this meeting, no one requested Olson to represent Hale" (p. 82); "[Redacted] recalled meeting with attorneys Theodore Olson and [redacted] to discuss the representation of David Hale, . . ." (P. 90). Mr. Ray has identified these references likely to be to the same December 1993 meeting. (May 21 Ray Response to Joint Qs. 5, 7, 9).

In addition to these limited descriptions in the OSR Report, Independent

Counsel Ray reviewed the underlying memoranda of interviews of three participants in the December 1993 meeting in Mr. Olson's office and summarized their statements in a May 21 letter responding to a question sent unilaterally by Senator HATCH. According to Mr. Ray, whose cooperation during this bipartisan inquiry has been exemplary and helpful, Mr. Olson admitted that at this meeting David Hale's need for counsel was discussed and that this meeting was "the commencement of [my] relationship with the American Spectator magazine" but he declined to describe the substance of that discussion, claiming the attorney/client privilege." (Id., p. 2). It is difficult to see, however, how the meeting could be covered by attorney/client privilege when David Hale, who had no formal affiliation with the Spectator, was present.

One unnamed participant confirms part of Mr. Olson's recollection, stating, "the purpose of the meeting was to get Olson to represent Hale." Another unnamed participant appears to confirm the other part of Mr. Olson's recollection regarding the second purpose of the meeting about American Spectator activities, stating: "The subject of this meeting was Bill and Hillary Clinton and the need for the Spectator to investigate and report on numerous alleged Clinton scandals." (Emphasis supplied).

Having seen the OSR Report and a statement submitted by Michael Horowitz, I am led to wonder whether the account of a late 1993 or early 1994 meeting in the Washington law office of Gibson, Dunn & Crutcher attended by David Henderson, Steve Boynton, John Mintz, Ronald Burr, Ted Olson and Michael Horowitz in *The Hunting of the President* (J. Conason & G. Lyons, 2000) is more accurate than we have been led to believe by Mr. Olson. At his hearing, I had asked Mr. Olson whether there had been any meetings of the "Arkansas project" in his office and he responded without reservation: "No, there were none."

I followed up with a written question asking in particular about the time frame of 1993 and 1994, and Mr. Olson answered that he was, "not aware of any meeting organizing, planning or implementing the 'Arkansas Project' in my law firm in 1993 or 1994." I then followed up by drawing his attention to a passage out of *The Hunting of the President* (Id.) in which the authors of that book wrote that a meeting did take place at which the topic was using Scaife funds and the American Spectator to, "mount a series of probes into the Clintons and their alleged crimes in Arkansas." In response to that written question, Mr. Olson was less assertive and categorical. He did not deny that a meeting took place but disputed the characterization of the topic of the meeting. Hedging his testimony, he

noted that he did, "not recall the meeting described."

With respect to Mr. Olson's initial categorical denial of meeting at Gibson Dunn's offices, in response to another written follow up question derived from a passage in *The Hunting of the President* (Id.), I asked whether there had, in fact been meetings not only in 1993 and 1994 but also in July 1997 at the offices of Mr. Olson's law firm to discuss allegations that money for the "Arkansas Project" had been misallocated. Confronted with the specific reference to the public record, Mr. Olson modified his earlier categorical denial by conceding: "I do recall meetings, which I now realize must have been in the summer of 1997 in my office regarding allegations regarding what became known as the 'Arkansas Project' and questions concerning whether expenditures involved in that project had been properly documented."

Third, Mr. Olson has apparently down-played his involvement in the development and direction of "Arkansas Project" stories, perhaps to avoid any inconsistency with his initial representation to the Committee that he was not involved in the management of this project.

Yet, according to a published report in the *Washington Post* on May 10, 2001, the report to which Senator HATCH referred when he indicated that "legitimate questions" had been raised, David Brock told *Post* reporters that "Olson attended a number of dinner meetings at the home of R. Emmett Tyrrell, Jr., president and chairman of the *Spectator*, which were explicitly 'brainstorming' sessions about the Arkansas Project." While Mr. Olson refused to respond to this allegation, his law partner, Douglas Cox, who worked on the *Spectator* account, conceded that Olson attended such dinners, but that "did not mean that he was aware of the scope of the 'Arkansas Project' and the Scaife funding."

David Brock has also indicated that Mr. Olson was "directly involved in the Arkansas Project, participating in discussions about possible stories and advising the magazine whether to publish one of its most controversial stories, about the death of Clinton White House deputy counsel Vincent Foster." *Washington Post*, May 11, 2001. According to the account in the *Post*, Mr. Olson told Mr. Brock that, "while he didn't place any stock in the piece, it was worth publishing because the role of the *Spectator* was to write Clinton scandal stories in hopes of 'shaking scandals loose.'" In his response to Senator HATCH, Mr. Olson did not deny Mr. Brock's account head on. Instead, he wrote that he told Mr. Brock that the article did not appear to be libelous or to raise any legal issues that would preclude its publication, and that he was not going to tell the editor-in-chief what should appear in the magazine.

The *Washington Post* also reported that both R. Emmett Tyrrell and Wladyslaw Pleszczynski said that project story ideas, legal issues involving the stories, and other directly related matters were discussed with Mr. Olson by staff members and at dinner parties of *Spectator* staff and board members. The reaction from Mr. Olson's supporters was swift. On May 15, 2001, Senator HATCH shared with us a letter he obtained from Messrs. Tyrrell and Pleszczynski denying the specific words in the *Post* story but not denying that they talked to the *Post* reporters. Indeed, the *Post* story quotes Mr. Tyrrell, a quote he does not disavow, as saying he did not recall, but it was a possibility that he talked to Ted Olson about the stories about the Clintons. "I would say it was a possibility, just as it was a possibility that Roosevelt would have discussed Pearl Harbor on December 8 with his secretary of state." Tyrrell and Pleszczynski also say that Mr. Olson's carefully worded disclaimer was technically accurate as far as it went.

In a blatant effort to undermine Mr. Brock's powerful, first-hand recollection of Mr. Olson's participation in and contributions to the activities of the "Arkansas Project," Mr. Tyrrell also submitted a statement that Mr. Brock was not a part of the "Arkansas Project." Mr. Brock, in reply, submitted strong contradictory evidence to the Tyrrell statement and supplied the committee with multiple Arkansas Project expense reports which remain unrefuted and which Mr. Brock states, "clearly show that I was reimbursed thousands of dollars by the Project for travel, office supplies, postage, and the like."

Over the course of the past few weeks, Mr. Olson has downplayed any significance of discussions in social settings about the stories that were the product of the "Arkansas Project." In his May 9, 2001, letter, Mr. Olson acknowledged: "Your previous questions asked about contacts that I may have had with people involved in the project. My answer was and is that I had dealings with the editors of the magazine and some of its reporters and staff, some social, some in connection with legal work. This was during a time when those persons were involved in one form or another with the investigative journalistic efforts which the magazine was contemporaneously pursuing. I was, of course, aware, along with the public generally, that the magazine was writing articles about the Clintons, but I did not know that there was a special source of funding for these efforts."

In his May 14, 2001, letter to Senator HATCH, he writes: "It was also true that in social settings, the magazine's editorial staff and writers spoke of the articles that they were involved in writing and publishing. I was among

scores of people from time to time included in such social events, but nothing about these social discussions involved organizing, supervising or managing the project—they were simply discussions of subjects of contemporaneous interest to the magazine's editors and writers."

Yet, taken as a whole, Mr. Olson was clearly involved and participated both professionally and socially in the work of the *American Spectator* and its "Arkansas Project." There is absolutely nothing illegal about this involvement and participation, but it shows a larger role in these activities than Mr. Olson initially portrayed.

Fourth, Mr. Olson minimized his role in the "Arkansas Project" and the *American Spectator* by failing to give complete information about the amount of remuneration he has received for his activities on their behalf when he was first asked. He told us on April 19 that he was paid from \$500 to \$1,000 for his articles that appeared in the *American Spectator* magazine. Yet, we find out in the *Washington Post* on May 10 that his firm was paid over \$8,000 for work that was used in just one of those articles. In addition, the *Post* reported that over \$14,000 was paid to Mr. Olson's law firm and attributed by *American Spectator* to the "Arkansas Project."

When he was asked during his hearing about an article he had coauthored that was published under the pseudonym "Solitary, Poor, Nasty, Brutish and Short" in the *American Spectator* magazine he did not indicate that "the magazine hired [his] firm to prepare" such materials and to perform legal research on the theoretical criminal exposure of the President and Mrs. Clinton based on press accounts of their conduct. I, for one, thought Mr. Olson had defended his writings as matters of personal First Amendment political expression. I had no idea from his testimony at his confirmation hearing that this article was part of his and his firm's ongoing legal representation of *American Spectator* Educational Foundation, that it was a commissioned piece of legal writing, paid for by a grant from conservative billionaire Richard Mellon Scaife. I am now left to wonder whether his article that was so critical of the Attorney General and the Justice Department was as he described them at his hearing the "statements of a private citizen," or another richly paid for political tract.

Mr. Tyrrell and Mr. Pleszczynski do not deny that Mr. Olson was paid for the chart speculating on the Clintons' potential criminal exposure. Instead, they merely repeat the mantra that even if he was paid with "Arkansas Project" funds, Mr. Olson would not have known that. What they leave out is a necessary qualifier, "at the time he received the payment." They and Mr. Olson became privy to the internal

audit of the "Arkansas Project" by 1998. That audit and his knowledge as a Board Member of the extent of the "Arkansas Project" it revealed render Mr. Olson's testimony in April, 2001, less than complete.

I have inquired of Mr. Olson what his and his firm's legal representation of the American Spectator entailed. In response he has been extremely general, vague and unspecific and, at times, has cloaked his nonresponsiveness in allusions to the attorney-client privilege. In fact, his law partner, Douglas Cox, has acknowledged that he and Mr. Olson worked on legal matters for the American Spectator, including legal research that was incorporated into the article that was published in 1994 in the American Spectator, under a fictitious name, that argues that the President was facing up to 178 years in prison and Mrs. Clinton had a criminal exposure of 47 years in prison. He then proceeds to undercut any claim of attorney-client privilege for these activities by indicating that they did not rely on any communications with anyone at American Spectator.

Having now conceded his involvement in these matters, something he did not do initially, the question arises: how extensive was that involvement as a lawyer? That is why I asked at least for production of his firm's billing records for legal services rendered to the American Spectator, but was stonewalled on that request. Mr. Olson asserted attorney-client privilege; he did not offer to cooperate by producing non-privileged copies of those records. (April 25 Response, Q.4; May 9 Response, p. 3). Such records have been produced in connection with other government inquiries.

As part of the bipartisan inquiry undertaken after the Committee vote on this nomination, we became aware of this fact. The May 28, 1999 transmittal letter for the December 9, 1998 OSR Report indicates that request were made to Mr. Olson and his law firm, Bigson Dunn & Crutcher (GD&C) for billing records for any client that had received Scaife foundation grants between 1992-1998 in order to ascertain whether there had "been an indirect method to compensate GD&C for its unpaid representation of Hale." Just as here, GD&C initially invoked attorney-client privilege but ultimately non-privileged billing records for Mr. Olson's and GD&C's representation of both David Hale and the American Spectator were produced. (May 21 Ray Response to Joint A. 1). However, the independent counsel was unable to forward those records in response to the bipartisan, joint request for them from Senator HATCH and myself.

Accordingly, Senator HATCH and I then sent a joint request to Mr. Olson's firm requesting information about the total amount of fees paid by the American Spectator to the firm. On May 24,

Mr. Cox informed us by letter that the amount paid over the course of five and one-half years for legal services performed is \$94,405. That is a far different number than the \$500 to \$1,000 per article the Committee was first told by Mr. Olson.

Fifth, Mr. Olson has tried to distance himself from the most controversial aspects of the "Arkansas Project" in its activities to publicize allegations of wrongdoing about the Clintons in Arkansas. Mr. Olson stated that he "represented the American Spectator in the performance of legal services from time to time beginning in 1994 . . . those legal services were not for the purpose of conducting or assisting in the conduct of investigations of the Clintons." (April 25th Responses, Q. 4). Yet, we find out he was paid over \$8,000 to prepare a chart outlining the Clintons' criminal exposure as research for a February 1994 article Mr. Olson co-authored against the Clintons entitled, 'Criminal laws Implicated by the Clinton Scandals: A partial list.'

Finally, Mr. Olson has testified he simply does not recall who contacted him to represent David Hale. When I asked Mr. Olson at his April 5 hearing how he came to represent Mr. Hale he started by saying, "[t]wo of [Hale's] then lawyers contacted me and asked . . . ." A few seconds later Mr. Olson said, "[o]ne of his lawyers contacted me—I can't recall the man's name—and asked whether I would be available to represent Mr. Hale in connection with that subpoena here in Washington, D.C. They felt that they needed Washington counsel with some experience dealing with a congressional investigation. I did agree to do that. Mr. Hale and I met together."

Even in his May 9 letter, Mr. Olson asserts that he, "cannot recall when [he] was first contacted about the possibility of representing Mr. Hale." He indicates that he believes, "that [he] was contacted by a person or persons whose identities [he] cannot presently recall sometime before then regarding whether I might be willing to represent Mr. Hale if he needed representation in Washington. As I recall, I indicated at the time that I might be able to do so, but only in connection with a potential congressional subpoena, not with respect to legal matters pending in Arkansas. . . . I believe that this meeting was inconclusive because Mr. Hale did not at that time need representation in Washington."

The Washington Post reported that David Henderson said that he introduced Hale to Olson when Hale came to Washington to find a lawyer who could help him deal with a subpoena from the Senate Whitewater committee, and sat in on a meeting between the two men. Interestingly, David Henderson apparently signed a statement on May 14 indicating that in his view he broke no law while implementing the "Arkansas

Project." What he does not say and what he does not deny is that he was the person who introduced David Hale to Mr. Olson. The role that David Henderson played in introducing David Hale to Mr. Olson is apparently corroborated by several other witnesses who have spoken to the American Prospect in a story released on May 24.

It now strikes me as strange that a man as capable as Mr. Olson with his vast abilities of recall could not remember the name of David Henderson, if Mr. Henderson was, in fact, involved in setting up that representation. It strikes me as doubly strange when the bipartisan inquiry conducted after the Committee vote on this nomination uncovered evidence that Mr. Olson was able to recall who introduced him to David Hale just a couple of years ago when asked the same question.

The OSR Report indicates that in 1998 Mr. Olson recalled who referred David Hale to him for legal representation, stating: "Hale became a client of Olson's firm around November 1995. Olson believes that Hale may have been referred to him by [redacted]." (OSR Report, p. 79).

It leads one to wonder whether Mr. Olson's failure to recall the name David Henderson had something to do with his not wanting to indicate the connection to such a central figure in the "Arkansas Project." Indeed, it has been reported that when Mr. Olson became a Member of the Board of Directors of the American Spectator his January 1996 letter accepting the position was addressed to the publisher Ronald Burr with copies sent to Messrs. Tyrrell and Henderson. Mr. Henderson says in his recent statement that he served for a while on the Spectator Board. But why was he, in particular, sent a copy? One explanation is that Mr. Olson has a selective memory and that he did not recall Mr. Henderson as the person who contacted him to represent David Hale because that would simply be another tie to the "Arkansas Project." But we may never know for sure.

On this point regarding how Mr. Olson came to represent Mr. Hale, and Mr. Olson's testimony to the Committee about it, Michael J. Horowitz submitted a statement that says that he, Mr. Horowitz, "attended one meeting in Mr. Olson's presence at which the matter discussed was legal representation for David Hale, who was facing Congressional testimony and was in need of distinguished Washington counsel. At that meeting—at which no mention I know of was made of the 'Arkansas Project' or any term like it—the subject under discussion was whether Mr. Olson's firm would serve as counsel to Mr. Hale."

It is entirely unclear in what capacity Mr. Horowitz was attending such a meeting, but it may not have been quite as simple as one or two lawyers



then representing Mr. Hale approaching a high profile Washington lawyer and his instantaneous agreement to accept the representation for a client without a retainer and without much prospect of being paid after. According to Mr. Olson, he and Mr. Hale "met together" and Mr. Hale agreed to pay [Gibson, Dunn & Crutcher's] fees." In the end, Mr. Hale could not pay the \$140,000 in legal fees he owed Mr. Olson.

Fitness to be Solicitor General. Some have said, why is this important? Does this matter whether he accurately and fully described his role in the *American Spectator* and the "Arkansas Project"? It is important for two reasons, both of which go to the core of the fitness of the nominee to serve as Solicitor General. The principle question raised by the nomination of Mr. Olson to this particular position is whether his partisanship over the last several years in connection with so many far reaching anti-Clinton efforts mark Mr. Olson as a thoroughgoing partisan who will not be able to check his partisan political instincts at the door to the Office of the Solicitor General. Similar questions were raised by the nomination of Michael Chertoff. In that case the questions were answered and the doubts dissipated. In connection with the Olson nomination, those doubts have grown over time.

Had Mr. Olson conceded the extent of his involvement in anti-Clinton activities and given the kinds of assurances that Mr. Chertoff did about his upcoming responsibilities, I would be supporting his confirmation. Indeed, when I met with Mr. Olson and at his hearing, I hoped and expected that to be my position. I expected to be able to give him the benefit of the doubt and, in light of the deference I would normally accord a President's Executive Branch nominees, I fully expected to be voting for this nomination.

In the wake of the hearing, the series of supplemental responses we have received and the unanswered questions now in the public record about Mr. Olson's involvement in partisan activities like the "Arkansas Project," I still have my doubts.

Second is the question of candor and straightforwardness. I have not had the sense from his hearing onward that Mr. Olson has been truly forthcoming with me or with the Committee. My sense is that for some reason he chose from the outset to try to minimize his role in connection with the activities of the *American Spectator*, that he has sought to characterize it in the most favorable possible light, that he has sought to conclude for us rather than provide us with the facts and let us conclude how to view his activities.

I will cite another example of non-responsiveness from the record. I asked Mr. Olson in light of his testimony at the hearing that he was not involved in

the origins or management of the 'Arkansas Project': "Were you involved in advising anyone who was involved in the origins or management of the project? If so, what advice did you provide? Were you at meetings or social events with anyone involved in the project as an originator, manager, reporter, or source for the project? If so, what role did you play at these meetings or social events?"

Mr. Olson's response was, as follows:

"I did not realize that a Project of any sort was underway except to the extent that I have indicated. I was in contact at social events with reporters for the magazine and members of the editorial staff, individuals whom I regard as personal friends. I have been at countless social events at which one or more of such persons may have been present. I have not kept records of such meetings, or the nature of the conversations that may have occurred at such meetings that might have involved President Clinton or his contemporaneous or past conduct. I was not playing any particular role at those social events, except that I was probably a host of events at which persons who wrote for or performed editorial services for the *American Spectator* may have been present. To the extent that it is relevant to your inquiry, I was the best man at the wedding of the editor-in-chief of the *American Spectator*. I recall that he was also present at my wedding. He is a personal friend and we have had numerous social meetings. He has written at least two books about former President Clinton. I do not interpret your inquiry as asking for the substance of conversations at social events. And I do not recall giving any advice concerning the conduct of the 'Project' or its origins or management.

Literally true? Probably. Responsive? Hardly. At the time of his hearing and his answer, Mr. Olson was well aware of the activities of the "Arkansas Project," which was operated by the organization for which he acted as lawyer, author and contributor, Board Member and officer. He had been presented with an audit and played a pivotal role in reviewing the examination of its management, methods and results, according to Mr. Eastland. His answer, however, steers clear of perjury without responding to the concerns being raised. It relies on a lack of recollection and is an attempt at distraction.

*Conclusion.* As I review this record and the initial nonresponsiveness, lack of recall, corrections when confronted with specifics, I am left to wonder what happened to "absolute candor and fair dealing." In concluding my May 4, 2001, letter to Mr. Olson I noted: "The credibility of the person appointed to be the Solicitor General is of paramount importance. When arguing in front of the Supreme Court on behalf of the United States Government, the Solicitor General is expected to come forward with both the strengths and weaknesses of the case, to inform the Court of things it might not otherwise know, and to be honest in all his or her dealings with the Court. I expect that same responsiveness and cooperation from nomi-

nees before this Committee." My expectations have been disappointed.

I understand the role of a lawyer-advocate in our legal system, and I did not intend to oppose this nomination merely because of Mr. Olson's clients and his clients' activities. If confirmed, however, Mr. Olson's next client will be the United States of America—and all of us. I want to be sure that our nation's top lawyer will see the truth and speak the truth fully to the Supreme Court and represent all of our best interests in the weighty matters over which the Solicitor General exercises public authority. Based upon what I have seen I do not have the requisite confidence in Mr. Olson to be able to support his nomination. I will vote no.

I reserve the remainder of my time.

Mr. HATCH. Mr. President, I agree with my colleague from Vermont that the Solicitor General must be a person of the highest integrity. This is very important if the Solicitor General is to represent the interests of all Americans and to be a valuable assistant to the Supreme Court. Mr. Olson himself acknowledged this high standard in his testimony to the committee.

I believe that Mr. Olson has exemplified this high level of candor and integrity in all of his dealings with the committee.

Some of my colleagues have alleged that Mr. Olson misdirected the committee in his answers. But this is simply untrue. Mr. Olson told us what he did with the *American Spectator* and the Arkansas Project. He wrote several articles for that magazine—copies of these articles were all provided to the committee with Mr. Olson's questionnaire. Mr. Olson also told us that he was on the board of the magazine and became aware of the Arkansas Project in 1997. He has not attempted to hide any of these activities from the committee. Rather he has cooperated fully, submitting numerous responses to questions from members of the Judiciary Committee.

Mr. Olson enjoys the support of many prominent liberal scholars and lawyers, as I have detailed already. Many of his colleagues at the Office of Legal Counsel have attested to his fairness and his consummate ability to serve as a government lawyer in a nonpartisan manner.

Indeed, many of the allegations against Mr. Olson have arisen from reports in *The Washington Post*. But the *Post* has advocated the confirmation of Mr. Olson.

Mr. Olson is one of the most qualified nominees ever for the position of Solicitor General. I hope that this body will confirm him today so that he can begin his important work litigating on behalf of the United States.

Mr. President, I ask unanimous consent to have printed in the *RECORD* the following letters we have received in support of Mr. Olson. These include letters from Robert Bennett, Larry



Simms, Michael Horowitz, James Ring Adams, Terry Eastland, Floyd Abrams, Laurence Tribe, William Webster, R. Emmett Tyrell, Wladyslaw Pleszczynski, Douglas Cox, David Henderson, and Stephen Boynton. These letters demonstrate the depth and breadth of the support for Mr. Olson's nomination.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP,  
Washington, DC, May 15, 2001.

Hon. ORRIN G. HATCH,  
Chairman, Senate Judiciary Committee, U.S.  
Senate, Washington, DC.

DEAR SENATOR HATCH: I write this letter in support of the appointment of Ted Olson as Solicitor General of the United States.

Our country is blessed with many wonderful lawyers of all political persuasions. In making judgments about their selection for high office, we must look beyond their political labels and pick the best qualified. The Ted Olson that I know and respect would be a great Solicitor General. I am confident that he will obey and enforce the law with skill, integrity and impartiality. The American people would be most fortunate to have such a skillful and honest advocate representing the United States before the Supreme Court.

Several years ago when I was the State Chair of the American College of Trial Lawyers for the District of Columbia, it was my responsibility to help select for admission to the College the very best advocates—those who were the most skilled, dedicated and honest. At the top of my list was Ted Olson. Ted, because of his stellar qualifications and reputation for integrity, sailed through the selection process. Those who supported him were liberals, moderates and conservatives of all stripes.

While I do not have any personal knowledge as to what role, if any, Mr. Olson played in the "Arkansas Project" or the full extent of his relationship with the American Spectator, what I do know is that Ted Olson is a truth-teller and you can rely on his representations regarding these matters. Moreover, I agree with Senator Leahy that the credibility of the individual appointed to be Solicitor General is of paramount importance. In my view, based on the many years I have known him, Ted Olson is such an individual. He is a man of great personal integrity and credibility and should be confirmed.

Sincerely,

ROBERT S. BENNETT.

GIBSON, DUNN & CRUTCHER, LLP,  
Washington, DC, May 15, 2001.

Re the nomination of Theodore B. Olson to be the Solicitor General of the United States

Hon. ORRIN HATCH,  
Chairman, Committee on the Judiciary, U.S.  
Senate, Washington, DC.

Hon. PATRICK J. LEAHY,  
Ranking Minority Member, Senate Judiciary  
Committee, Washington, DC.

DEAR SENATORS HATCH AND LEAHY: This letter is being sent to the Committee in connection with the nomination of Theodore B. Olson to become the Solicitor General of the United States. It is written in the context of an apparent controversy regarding the truthfulness of particular testimony given by Mr. Olson at his confirmation hearing before the

Committee. I have had no involvement whatsoever in Mr. Olson's preparation for that hearing, I have not reviewed a transcript of that hearing, and I have not discussed the substance of this controversy with Mr. Olson or anyone who may be assisting Mr. Olson in this matter. Indeed, my universe of asserted facts regarding this controversy is limited to my review of two or possibly three articles printed recently in *The Washington Post* that were brought to my attention by a former associate of Gibson, Dunn in a purely social communication. This letter has not been, nor will it be, reviewed or seen by anyone other than word processing personnel before it is delivered to the Committee, although I am providing a copy of it to Mr. Olson as a matter of courtesy.

I understand the central concern of the Committee to be the truthfulness and integrity that Mr. Olson would bring to the presentation of the position of the United States in cases brought before the Supreme Court or other cases within the ambit of the authority of the Solicitor General. I share the view that there should be no doubt about the ability and integrity of any nominee to this position to present the Government's position with honesty and integrity. When this sort of issue arises in this town, it is customary for the record to be filled, often to overflowing, with letters extolling the integrity of the nominee whose ability to serve with the requisite integrity has been challenged. I doubt that such testimonials are particularly helpful to the Committee, I would, instead, like to bring to the attention of the Committee three instances in which I worked with Mr. Olson on matters that demanded precisely the kind of intellectual integrity that should be displayed by any Solicitor General and in which Mr. Olson displayed that integrity under what can only be characterized as battlefield conditions. First, I should provide the Committee with some relevant information about myself.

I graduated from the Boston University School of Law in 1973, having spent four years as an officer in the U.S. Navy after my graduation from Dartmouth College in 1966. I grew up in Tennessee, campaigned for the late Senator Albert Gore, Sr. in his last campaign in 1970, and I am a Democrat. In 1973-74, I served as a law clerk to Circuit Judge James L. Oakes of the Second Circuit. In 1974-75, I served as law clerk to Associate Justice Byron R. White of the Supreme Court. In 1975-76, I served as Counsel to the Reporters Committee for Freedom of the Press and began teaching a First Amendment seminar as an adjunct professor of the Georgetown Law Center, a course I taught until 1985. In June 1976, I was hired by Antonin Scalia, then the Assistant Attorney General in charge of the Office of Legal Counsel of the Department of Justice ("OLC"), as an attorney-adviser. In 1979, I was appointed Deputy Assistant Attorney General in OLC by Attorney General Bell. I was the only remaining Deputy Assistant in OLC when the first Reagan Administration took office in January, 1981, and I continued to serve in that capacity until February 1985. Mr. Olson was the Assistant Attorney General in charge of OLC from his confirmation in 1981 through the fall of 1984. We worked closely together on many issues, and I came to know him well both at the professional and personal level. I joined Gibson, Dunn as an associate in February 1985, became a partner in 1988 and have practiced appellate law with the firm for sixteen years.

Mr. Olson's handling of three major issues during his tenure as the head of OLC stands

out as exemplary of his intellectual integrity. First, and as this Committee is well aware, the courts had not at that time determined the constitutionality of the legislative veto device. In addition, the Republican plank endorsed by President Reagan openly supported the legislative veto device. When he became head of OLC, Mr. Olson studied the question of the constitutionality of the legislative veto device, discussed that question at great length with me and other OLC lawyers, and concluded that legislative veto devices were, root and branch, unconstitutional. He so advised Attorney General Smith, who in turn advised President Reagan and members of the President's staff—many of whom were strongly supportive of legislative veto devices. Mr. Olson convinced the Attorney General that the issue involved was a legal issue, not a political issue, and that the law, not the plank of the Republican Party, had to be followed by everyone involved, including the President himself. This story is chronicled in *Chadha: The Story of an Epic Constitutional Struggle* by Professor Barbara Hankinson Craig of Wesleyan University, and I strongly commend that book to the Committee as it considers Mr. Olson's nomination.

Second, and as this Committee is also aware, there was much discussion in the early years of the first Reagan Administration about the enactment of legislation to curb the jurisdiction of the Supreme Court of the United States. Much of that discussion was initiated by the new Republican majority on this Committee. Once again, Mr. Olson was put under substantial pressure to "play ball" with the Administration and clear the Administration to endorse such legislation. Once again, he studied the issue, discussed it extensively with me and other OLC lawyers, and concluded that such legislation would probably be held unconstitutional. That opinion was reduced to writing and served as the Administration's response. No such legislation, so far as I can recall, was ever seriously considered after the Administration's position was communicated to Congress.

Third, in late 1981, I was preparing to travel to The Hague on business when I was asked by Mr. Olson for my views on the substantive issues raised in what ultimately became the famous Bob Jones case. Although I did not have much time to study those substantive issues, I advised Mr. Olson orally that I feel that the Government's position taken in that case was correct and would be vindicated by the Supreme Court. I also advised Mr. Olson that I felt strongly that the Office of the Solicitor General had an obligation to defend the statute involved in that case in the Supreme Court. By the time I returned from The Hague, the Bob Jones fiasco was playing itself out, with a decision having been made—over Mr. Olson's strong objections—that the statute would not be defended by the Solicitor General. The Supreme Court ultimately appointed William Coleman to defend the statute in that court, and Mr. Olson's position was vindicated by, as I recall, an almost unanimous decision.

This letter is written off the top of my head, so the Committee will have to forgive me for any error in any of the facts stated above that I may have made, but there is no error in my conclusion that these three examples paint the portrait of a lawyer scrupulously devoted to the law and having the personal and intellectual integrity to place the law above the politics of Washington at considerable personal risk. It is that quality, after all, that it seems to me one should look

for in considering the nomination of any person to be the Solicitor General of the United States. Mr. Olson is a fierce advocate, but he is an honest advocate and a person whose integrity and devotion to the law and the rule of law have survived challenges to which very few public servants are ever subjected.

Very truly yours,

LARRY L. SIMMS.

STATEMENT OF MICHAEL J. HOROWITZ TO THE  
SENATE JUDICIARY COMMITTEE

I am a Senior Fellow and Director of the Project for Civil Justice at the Hudson Institute. I served as General Counsel of OMB under President Reagan. I have known Ted Olson for 20 years and have the highest regard for him and for his professionalism, intelligence and integrity.

In fact, I have always found Mr. Olson's word to be absolutely reliable. I have disagreed with Mr. Olson from time to time on issues of policy, but I have never met a person more meticulously scrupulous on matters of principle or honesty.

Never.

I have read Mr. Olson's testimony in response to Senator Leahy's question regarding the "Arkansas Project," delivered during Mr. Olson's confirmation hearing. His testimony to Senator Leahy was, in all respects that I am aware, wholly accurate. Specifically, I know of no respect in which Mr. Olson was involved in the Project's "origin or its management."

I attended one meeting in Mr. Olson's presence at which the matter discussed was legal representation for David Hale, who was facing Congressional testimony and was in need of distinguished Washington counsel. At that meeting—at which no mention I know of was made of the "Arkansas Project" or any term like it—the subject under discussion was whether Mr. Olson's firm would serve as counsel to Mr. Hale. Put otherwise, I have never heard Mr. Olson discuss or imply that he was involved in managing or directing either anything called the Arkansas Project or any of the investigative journalistic inquiries of his client, the American Spectator Magazine.

In making the above statement, I note that I am aware of nothing to suggest that the American Spectator violated the law. Likewise, I believe it clear that the American Spectator's journalistic and investigative activities were and are fully protected by the First Amendment.

I was hired in late 1993 by the American Spectator to be the lead writer for what has come to be known as the "Arkansas Project." I originally started as a free-lance writer, but was hired onto the staff of the magazine in 1994, where I remained until January 1, 1999. My numerous articles in the Spectator, based largely on my personal reporting in Arkansas, analyzed many different aspects of Whitewater and related controversies. Over the four years or so that I worked for the Spectator, I traveled to Arkansas on roughly a monthly basis.

I understand that David Brock, who for a period was another writer for the magazine, has alleged that Mr. Theodore Olson directed or supervised the "Arkansas Project." As stated above, I was the lead writer on the Project, and Mr. Olson had absolutely no role in guiding my development of stories for the magazine or in managing my work. Indeed, I believe I only spoke to Mr. Olson once during the years in question, at the end of a widely attended dinner at a Washington, D.C. hotel, sometime in 1998, I believe. I

sought him out to ask a general question about recent, publicly reported developments in the Webster Hubbell legal case. It was my impression at the time that he did not recognize me, and I had to explain who I was; we spoke only for about five minutes. Given that we had no other meetings, conversations or other communications about my work, it is false and wrong to assert that Mr. Olson had any role whatsoever in managing or directing what is referred to as the "Arkansas Project."

May 14, 2001.

JAMES RING ADAMS.

MCLEAN, VA, May 14, 2001.

Hon. ORRIN HATCH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HATCH: I am writing to comment on matters of possible relevance to President Bush's nomination of Theodore B. Olson to be Solicitor General.

I became publisher of The American Spectator in November 1997. I was authorized by the board of directors to conduct a review of what has been called the "Arkansas Project." I completed the review in 1998 and reported my findings to the board. I also assisted investigators working under the Whitewater independent counsel, who were charged with looking into certain issues involving the project.

As I discovered soon after I began my review, the project was conceived in the fall of 1993 by Editor-in-Chief R. Emmett Tyrrell, Jr., and Richard Larry, then the executive director of the Scaife foundations. The point of the project was to place in Arkansas individuals who would look into allegations involving then Governor Bill Clinton and relate their findings to the magazine's editors and writers for their review. The project contemplated the publication of investigative pieces. Two Scaife foundations were prepared to underwrite the project, which in grant correspondence was called "the editorial improvement project."

The project was commenced in November 1993. Individuals were duly retained to conduct the "on-the-ground" researches in Arkansas, and the first editorial result of the project was an article on an aspect of Whitewater, which was published in February 1994. The project continued through the early fall of 1997, and it produced a total (by my count) of eight articles. The Scaife foundations contributed a total of approximately \$2.3 million, more than \$1.8 million of which underwrote the work of the individuals in Arkansas.

In my review, I found no evidence that Mr. Olson was involved in the project's creation or its conduct. My own sense is that Mr. Olson did not become aware of the project until June 1997, when disagreements arose between the magazine's then publisher and Mr. Larry over project expenditures. At that time, Mr. Tyrrell, who was also chairman of the board, asked Mr. Olson, a board member since 1996, for his assistance in resolving the dispute. When I came aboard as publisher, Mr. Olson agreed that a review of the project was necessary. Throughout my review, which included an accounting of the monies spent on the project as well as an examination of its management, methods, and results, I had Mr. Olson's strong support.

Finally, I should add that, based upon my knowledge of the magazine's financial records in general and those of the Scaife-funded project in particular, Mr. Olson never received any payments from The American Spectator for his representation of David Hale.

I hope these observations are of assistance.  
Sincerely yours,

TERRY EASTLAND.

GAHILL GORDON & REINDEL,  
New York, NY, March 4, 2001.

Re Ted Olson

Hon. PATRICK J. LEAHY,  
Russell Senate Office Building,  
Washington, DC.

DEAR PAT: I'm not sure if Ted Olson needs a boost from the other side or not for Solicitor General, but I did want to offer one. Ted is just as conservative as his writings and clientele suggest. But on the assumption that Larry Tribe is not high on the appointment list for this Administration, I did want to say that I've known Ted since we worked together on a Supreme Court case—*Metromedia v. San Diego*—20 years ago and that I've always been impressed with his talent, his personal decency and his honor. He would serve with distinction as Solicitor General.

Sincerely,

FLOYD ABRAMS.

HARVARD UNIVERSITY LAW SCHOOL,  
Cambridge, MA, March 5, 2001.

Hon. PATRICK J. LEAHY,  
U.S. Senate,  
Washington, DC.

DEAR PAT: As one who knows Ted Olson and disagrees with him on many important issues, I nonetheless write in support of his confirmation as Solicitor General.

An explanation may be called for. After all, Ted was the oral advocate who opposed me in the United States Supreme Court in the first of the two arguments between Vice President Gore and now President (then-Governor) Bush, and Ted's were the briefs that I sought to defeat in the briefs I wrote and filed for Vice President Gore in both of the two Bush v. Gore cases. Ted's views of equal protection, of Article II, and of 3 U.S.C. §5, were views I believed, and continue to believe, are wrong. Although his views of Article II and of 3 U.S.C. §5 ultimately convinced only three Justices, his overall approach to the case won the presidency for his client. It surely cannot be that anyone who took that prevailing view and fought for it must on that account be opposed for the position of Solicitor General. Because Ted Olson briefed and argued his side of the case with intelligence, with insight, and with integrity, his advocacy on the occasion of the Florida election litigation—profoundly as I disagree with him on the merits—counts for me as a "plus" in this context, not as a minus. That his views coincide with those of a current Court majority on a number of vital issues as to which my views differ deeply should not rule him out.

I am willing to believe that the five Justices who in essence decided the recent presidential election thought they were genuinely acting to preserve the rule of law and to protect the constitutional processes of democracy from being undermined by a post-election recount procedure that they viewed as chaotic, lawless and essentially rigged. I believe that view was profoundly misguided and that the Court's majority deserves severe criticism not only for its misconception of reality but also for its breathtaking failure to explain its legal conclusions in terms that could at least make sense to an informed but detached observer. But I do not lay that failing at Ted Olson's feet; he acted as a responsible (if also misguided) advocate. The blunder was the Court's own doing.

If we set Bush v. Gore aside, what remains in Ted's case is an undeniably distinguished

career of an obviously exceptional lawyer with an enormous breadth of directly relevant experience. Although part of that career has been devoted to causes with which I disagree, his briefs and arguments have treated the applicable law and the underlying facts honestly and forthrightly, not disingenuously or deceptively. Ted seems to me capable of drawing the clear distinction that any Solicitor General who has been on the ramparts on various contentious issues must draw between his or her own aspirations for the directions in which the law should be pushed, and his or her best understanding of where the law presently is and where the Supreme Court ought to be nudging it, applying criteria less personal and more inclusive than those driving any individual advocate. Put simply, I write this letter in Ted Olson's support in the expectation, and on the understanding, that his testimony during his confirmation hearing, and the other evidence that the Senate Judiciary Committee will gather, will show him to be both able and willing not simply to articulate the Administration's or his own legal philosophy but to represent well the United States of America as his ultimate client before the Supreme Court, keeping a firm grip on what is best for that client and for the Constitution, not simply for the President's philosophical agenda.

Of course, any Solicitor General must speak for the Administration he or she represents and must, within limits, espouse its views. And any advocate must, to some degree, draw on his or her own views in deciding what to argue and how. But the special responsibility of the Solicitor General, both to the Court and to the country, requires an advocate with the capacity and the character, on crucial occasions, to rise above his or her Administration's pet theories and to advise the Court in ways that may not always advance the political priorities of the government. Sometimes the Solicitor General must defend the actions of Congress even when those actions were opposed by the Executive Branch. Sometimes the Solicitor General must decline to defend the actions of Congress, even when supported by the Executive, when they plainly conflict with the Constitution. Myriad examples could be given, but the general point is simple: Some advocates are too bound up in their own views, and in their duty to their immediate clients narrowly conceived, to act as counsel in this broader and higher sense. Some are too blinded by their own perspectives to see beyond them. Having observed Ted Olson in a number of situations, and having watched his career from afar, I would not expect him to be in that troublesome category. I would expect him, rather, to have the open-mindedness and breadth of perspective to meet the higher standard I am articulating here. My letter of support, at any rate, is premised on that expectation, and on the belief that the confirmation hearings will bear out that optimistic prediction.

In the end, only Ted Olson's performance in the role of Solicitor General will prove whether I am right or wrong in this hopeful evaluation. My strong sense, however, based on what I now know, is that, as Solicitor General, Ted Olson will perform his role with honor, and with distinction.

Best wishes always,

LAURENCE H. TRIBE.

WASHINGTON, DC, May 14, 2001.

Hon. ORRIN G. HATCH,  
Chairman, Judiciary Committee, U.S. Senate,  
Washington, DC.

Hon. PATRICK J. LEAHY,  
Ranking Minority Member, Judiciary Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN HATCH AND RANKING MINORITY MEMBER LEAHY: I write in support of the nomination of Theodore B. Olson by President Bush to be Solicitor General of the United States. I do so having the utmost confidence in his ability, his loyalty to country, his fidelity to the Constitution and his personal integrity.

My professional and personal association with Ted Olson began 20 years ago when he joined the Reagan administration and served as Assistant Attorney General, Office of Legal Counsel under Attorney General William French Smith. I was, at that time, Director of the Federal Bureau of Investigation. Few positions in our government are more sensitive or important to our government and the administration of justice than is the O.L.C. Ted carried out his responsibilities with a calm and steady hand, reflecting legal acumen and common sense, both important attributes for the "Attorney General's lawyer". In staff meetings his input and advice seemed consistently sound.

In private practice I have had occasion to work with Ted on some matters of common interest and have found the same high level of competence and judgment. He is one of our nation's foremost appellate advocates and has earned widespread admiration for his analytical and advocacy skills. If he is confirmed, he will serve his country and the cause of equal justice under law with great dedication.

Ted has been a member of the Legal Advisory Committee of the National Legal Center for the Public Interest, which I chair. His periodic review of the work of the Supreme Court has been insightful and helpful.

On a more personal note, I have known Ted as a thoughtful and caring friend for many years. I believe him to be honest and trustworthy and he has my full trust. He is the kind of person I would want to turn to for help, professional or otherwise, in time of need.

Having survived five Senate confirmations of my own, I have a full awareness of the Senate's solemn responsibility to advise and consent in these matters. I do hope you will give some weight to the opinions of those who know and respect Ted Olson. The President's choice is a very good one. I would not have written this letter if I did not firmly believe this to be true.

Respectfully,

WILLIAM H. WEBSTER.

THE AMERICAN SPECTATOR,  
ARLINGTON, VA, May 14, 2001.

Hon. ORRIN G. HATCH,  
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: Contrary to the Washington Post's May 11 story by Thomas B. Edsall and Robert G. Kaiser, we never "said that [Arkansas] project story ideas, legal issues involving the stories produced by the project and other directly related matters were discussed with Olson by staff members, and at dinner parties of Spectator staffers and board members." Apparently they got the idea from David Brock, Edsall's main source on the Olson matter, and an individual who has repeatedly acknowledged his deep bias against Olson and his former employer The American Spectator. In quoting him, the reporters might have mentioned his compromised credentials.

Although Mr. Brock has lately claimed to have been part of the so-called Arkansas Project, he was not. The record on that is indisputable. During his time at the magazine it was clear to everyone concerned—he was very public about this—that he was not part of the project. His well-known "Troopergate" story originated and was completed before any such project existed. If he spoke to Mr. Olson during those years it was as a reporter pursuing his own stories and not as a representative of a "project" he distanced himself from. Pleszczynski made that clear to Edsall. Brock's present claim that he was calling Olson as part of the "project" is a deceit.

What is more, if Mr. Olson's firm, Gibson, Dunn and Crutcher, was paid from project funds (like all recipients of checks from The American Spectator), the firm would not have known which internal account the magazine used for its payments. For all Gibson, Dunn and Crutcher knew, the magazine was paying it from funds derived from general income.

Mr. Olson's statements that he was "not involved in the project in its origin or its management" and that he was "not involved in organizing, supervising or managing the conduct of [the magazine's investigative] efforts" are accurate and thus truthful.

One final point, the precedent set by politicians seeking to probe the methods of payment and of reportage practiced by journalists has a chilling effect on the First Amendment. We would hope other journalists would recognize this danger to journalistic endeavors.

Sincerely,

R. EMMETT TYRRELL, Jr.,  
Editor-in-Chief,  
WLADYSLAW PLESZCZYNSKI,  
Editor, The American  
Spectator Online.

I am a partner in the law firm of Gibson, Dunn & Crutcher LLP. I became affiliated with the firm, originally as an "of counsel" employee, in 1993. Starting in 1994, I worked with Theodore Olson on certain legal matters for the firm's client, the American Spectator. That legal work included legal research regarding criminal laws potentially implicated by allegations of certain conduct by public officials, including President and Mrs. Clinton, as reported in the major media. That research was incorporated into an article that the American Spectator published in 1994. The magazine published the article under the by-line of "Solitary, Poor, Nasty, Brutish and Short," an obviously fictional law firm drawn from the famous quote from Hobbes, that the magazine had listed for many years on its masthead as its legal counsel. It was, however, widely known that Mr. Olson and I had prepared the material in the article.

In addition to periodic legal work for the client, Mr. Olson and I over the years co-wrote similar satiric pieces involving legal aspects of various matters involving the Clinton Administration. Some, but not all, of those pieces appeared under the "Solitary, Poor" by-line.

During my work with Mr. Olson for the American Spectator, I never heard the phrase "Arkansas Project" until it had become the subject of media reporting. I am not aware of any fact that would support or in any way credibly suggest that Mr. Olson was involved in the origin, management or supervision of the investigative journalism projects funded by one of the Scaife foundations that became known as the "Arkansas

Project." In drafting our articles, I never spoke with anyone at the American Spectator to obtain any facts, relying instead on already-published media reports, and legal resources such as statutes, congressional reports, and the like.

I met David Brock years ago, and in the early 1990s on occasion I would see and speak to him at parties in the Washington, DC area. I have not spoken to Mr. Brock for years. Starting some time ago, Mr. Brock developed a marked, publicly-expressed animus toward Mr. Olson and his wife.

I chose to become affiliated with Gibson, Dunn primarily because of Mr. Olson. Although I did not know Mr. Olson personally before I interviewed with the firm, he has a reputation as one of the best lawyers in Washington, a rigorous and demanding lawyer with a record of unflinching devotion to principle. In the years since I became affiliated with the firm, I have worked closely with Mr. Olson, including participation on numerous cases for the firm's clients. I can personally vouch for his extremely high professional standards; for his refusal to accept second-best efforts from himself or anyone around him; and for his fairness. I can also vouch, without reservation, for his great integrity.

In my view, he will make an excellent Solicitor General, and the Members of the Judiciary Committee should vote to confirm him with confidence.

DOUGLAS R. COX.

We were the two individuals charged by the American Spectator with implementing what has come to be called the "Arkansas Project," an effort to support investigative journalism in Arkansas that was specially funded by Richard Mellon Scaife. (Dave Henderson also served for a while on the Spectator Board.)

In connection with our investigative research for this journalistic project, we made numerous trips to Arkansas and elsewhere to speak first-hand to witnesses. Nothing that we did in connection with the "Arkansas Project" broke the law. Mr. Shaheen, a special counsel, reached the same conclusion after an extended investigation. Rather, we were conducting the same kind of investigative journalism, talking to witnesses, reviewing documents, that many journalists do every day. Such activities were not only lawful, but encouraged in an open and free democracy, and fully protected by the First Amendment. There was nothing at all improper about the investigative fact work that we performed for the American Spectator.

In performing our investigative work for the American Spectator, we were not directed or managed in any way by Theodore Olson. He did not participate, nor was he asked to participate, in either the planning or conduct of the "Arkansas Project." Contrary assertions, made by those lacking personal knowledge and with a political or personal agenda, are simply false.

May 15, 2001.

DAVID W. HENDERSON.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, on behalf of Senator HATCH, I yield time to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I thank my colleague from Alabama for

yielding time to me. I have sought recognition to support the nomination of Theodore Olson to be Solicitor General of the United States.

Mr. Olson comes to this position with an excellent academic and professional background. He received his law degree from the University of California at Berkeley in 1965 after having received a bachelor's degree from the University of the Pacific in 1962. He practiced law with the distinguished firm of Gibson, Dunn, and Crutcher from 1965 to 1971 as an associate, and then as a partner for almost a decade, until 1981. And then from 1984 to the present time—he was Assistant Attorney General, legal counsel, for the Department of Justice from 1981 to 1984. He came in with the administration of President Reagan.

I was elected in the same year, and I knew of his work, having served on the Judiciary Committee beginning immediately after taking my oath of office after the 1980 election.

He is a real professional. He has argued some of the most important cases before the Supreme Court of the United States.

On December 11, 2000, he argued the landmark case of *Gov. George W. Bush v. Vice President Albert Gore* where the decision of the Supreme Court of the United States essentially decided the conflict on the Florida election. I was present that day to hear that historic argument and can attest personally to his competency and his professionalism.

There have been some concerns about his partisanship. I am confident Mr. Olson can separate partisanship from his professional responsibilities as Solicitor General of the United States. It is not surprising that President Bush would appoint a Republican to be Solicitor General, nor is it surprising that President Bush would appoint Ted Olson to this important position in light of Mr. Olson's accomplishments, his demonstration of competency, and his assistance to President Bush on that major case.

Some questions have been raised as to some answers Mr. Olson gave at the confirmation hearing. A request was made to have an investigation of some of what Mr. Olson did. I took the position publicly in interviews and then later in the Judiciary Committee executive session when we considered Mr. Olson's nomination, saying I was prepared to see and support an investigation if there was something to investigate but that there had not been any allegation of any impropriety on Mr. Olson's part in terms of any specification as to what he was supposed to have said that was inconsistent or what he was supposed to have said that was not true.

I am not totally without experience in investigative matters. But a starting point of any investigation has to be an allegation, something to inves-

tigate. That was not provided. I called at that hearing for some specification. If you make a charge, even in a civil case, there has to be particularity alleged, there has to be some specification as to what the impropriety was, let alone wrongdoing in order to warrant an investigation.

I said at the hearing, although there was a certain amount of interest in moving the nomination ahead last Thursday, that I would support an investigation and would not rush to judgment if there was something to investigate. But nothing was forthcoming to warrant an investigation. One of the Judiciary Committee members said, well, Mr. Olson was not forthcoming at the Judiciary Committee hearing. I attended that hearing in part, and there were very few Senators there. But if there was some concern that Ted Olson wasn't forthcoming, the time to go into it was at the hearing or, if not at the hearing, Mr. Olson was available thereafter.

I asked the Senator who raised the question about his not being forthcoming if he had talked to Mr. Olson, and the answer was that he had not. So based on the record, it is my conclusion that any of the generalized charges as to Mr. Olson haven't been substantiated at all, haven't been raised to the level of specification to warrant any proceeding or any investigation.

I dare say that if those on the other side of the aisle had sought to block this nomination from coming up today, there were ample procedural opportunities for them to do just that.

So on this state of the record, on the state of Ted Olson's excellent academic and professional record, and his established expertise as an advocate before the Supreme Court of the United States, and understanding the difference between partisanship when he is in a partisan context as opposed to professionalism when he is representing the United States of America before the Supreme Court, I intend to support this nomination and vote aye.

I thank the Chair. I thank my friend from Alabama, the distinguished Senator from Alabama. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank the Senator from Pennsylvania for his outstanding remarks. He does, indeed, have a passion for truth and he pursues those he believes are not telling the truth aggressively in his examination and defends those he thinks are being unfairly accused. I have seen his skill in committee hearings many times. Senator SPECTER raised a number of questions about the allegations that were made about Mr. Olson. But his questions concerning the merit of the allegations against Mr. Olson were never answered. In fact, he simply asked: "Precisely what is it you say he was

testifying falsely about?" And I don't believe a satisfactory answer to this day has been given to that question.

Mr. President, I support Ted Olson's nomination to be the next Solicitor General. I commend Senators LEAHY, DASCHLE, HATCH, and LOTT for reaching an agreement to have the Olson nomination voted on today. Certain charges were made, but they have been investigated and, in my view, have been found wholly without merit. The charges were raised in a newspaper article in the Washington Post the day that the vote was scheduled on Mr. Olson's nomination. Some of the Senators questioned the article.

Subsequently, after the facts were examined, the Washington Post endorsed Ted Olson for this position. Nonetheless, Senator HATCH agreed to delay further and allow the matter to be examined even more thoroughly. That is why we are here today. Now that most of the partisan rhetoric has receded, I am glad the Senate will follow the moderate and wise voices of Professor Laurence Tribe, Robert Bennett, Beth Nolan, Floyd Abrams, and Senator ZELL MILLER in moving this nomination to confirmation.

The Solicitor General is the most important legal advocate in the country. The job has been called the greatest lawyer job in the world. As U.S. attorney for almost 15 years, I had the honor of standing up in court on a daily basis to say: "The United States is ready, Your Honor." I spoke for the United States in its Federal district court normally in the Southern District of Alabama. But what greater thrill could there be, what greater honor than to stand before the great U.S. Supreme Court and represent the greatest country in the history of the world and be the lawyer for that country in that great Court? Ted Olson is worthy of that job. He and his subordinates will shape the arguments in cases that come before the Federal appellate courts and, most importantly, before the Supreme Court of the United States. In this fashion, law is shaped slowly and carefully one case at a time over a period of years.

I note, however, that I have a slight disagreement with my distinguished colleague from Vermont on the question of this being an extraordinarily more sensitive a position than others. While it is a position that requires great skill and legal acumen, the truth is that the Solicitor General does not do a lot of things independently. Basically, the Solicitor General asks the Supreme Court, or perhaps some other lesser court if he chooses, to rule one way or the other. He is not making decisions independently about policies or procedures such as an FBI Director would make or the Deputy Attorney General or the Attorney General. He is basically in court constrained by the justices before whom he appears. And

it is, as everyone knows, critical that a Solicitor General maintain over a period of years credibility with the Supreme Court. Ted Olson, as a regular practitioner before the Supreme Court of the United States, understands that and will carefully husband his credibility with that Court as he has always done.

The Solicitor General must be a constitutional scholar of the first order, a lawyer and legal advocate with broad and distinguished legal experience, and must possess unquestioned integrity. Ted Olson excels in each of these categories.

First, Mr. Olson is a constitutional scholar of the highest order. He has studied and written about the Federalist Papers, the Framers, and the Constitution. He earnestly believes in the Constitution's design of limited and separated powers. He sincerely and deeply believes that the States cannot deny any person equal protection of the laws. He understands that history and theory of our fundamental law. There is no doubt about that, in my opinion. And he has been involved with it all of his professional career—in Government and out of Government, including many successful years as a partner in one of the great law firms in the country: Gibson, Dunn & Crutcher.

Second, Mr. Olson's distinguished experience as a lawyer demonstrates his understanding that the Constitution has real and meaningful impact on the lives of ordinary Americans. He has applied constitutional theory as an Assistant Attorney General for the Office of Legal Counsel. That is a critical position in the Department of Justice that provides legal counsel in the Department of Justice and to all governmental agencies, usually including the President of the United States. He held that office in previous years. He has done this in his own practice when advocating before the courts, including the Supreme Court of the United States.

In *Aetna Life Insurance Company v. Lavoie*, he advocated the due process rights of litigants who faced a judge who had a conflict of interest in the case but would not recuse himself. He represented those litigants to ensure that they would get a fair judge. In *Rice v. Cayetano*, he advocated the voting rights of those excluded because of their race. And in *Morrison v. Olson*, he advocated the position that the separation of powers principle required prosecutors to be appointed by the executive branch, a position that this entire Congress has now come to embrace many years later. That was a courageous position he took. Ultimately, Mr. Olson won because his position was validated by subsequent events.

Mr. Olson had a legal career which has, to a remarkable degree, placed him as a key player in many of the important legal battles of our time. It is

remarkable, really. These cases, many intense, have enriched him. They have enhanced his judgment and wisdom. I can think of no one better prepared to help the President of the United States and the Attorney General deal with complex, contentious, and important cases that are surely to come as the years go by.

When he was before the Judiciary Committee, I asked him: "Mr. Olson, are you prepared to tell the President of the United States no?"

Presidents get treated grandly, like corporate executives and Governors, and they want to do things, and they do not want a lawyer telling them they cannot do it. But sometimes there has to be a lawyer capable of telling the President "no." "No, sir, you cannot do that. The law will not allow that. I am sorry, Mr. President, we will try to figure out some other way for you to do what you want to do; you cannot do that."

I believe, based on Ted Olson's experience, his closeness to the President, the confidence the President has in him, he will be able to do that better than any person in America.

Finally, Mr. Olson is a man of unquestioned integrity. For example, when asked on numerous occasions to criticize the justices of the Florida Supreme Court in *Bush v. Gore* litigation, he always declined. He always respected the justices and their court, and even if he disagreed with their legal opinion—and his position was later validated by the U.S. Supreme Court. Mr. Olson's conduct in the most famous case of this generation, as well as his reputation, won him the endorsement of his adversary, Professor Laurence Tribe the famed and brilliant advocate for Al Gore.

Indeed, a President assembles an administration, and he is entitled to have around him people in whom he has great confidence, people whom, in the most critical points of his administration, he trusts to give him advice on which he can rely and make decisions.

What greater validation is there than perhaps the greatest lawsuit of this century for the Presidency of the United States, to be decided by the Court, and whom did President Bush, out of all the lawyers in America, choose? Did he want someone who was purely a political hack, someone who was a political guru, or did he want the best lawyer he could get to help him win the most important case facing the country maybe of the century? Whom did he choose? Isn't that a good reflection on Ted Olson's reputation that the President chose him, and it is not surprising that Al Gore chose someone of the quality of Laurence Tribe, two great, brilliant litigators in the Supreme Court that day.

Mr. Olson has written and he has thought deeply about constitutional law. He is not a professor, however, as

many of our Solicitors General have been. He has been a lawyer involved in Government in all kinds of issues. During that time, he has gained extraordinary insight, skill, and knowledge about how Government works. He has incredibly unique and valuable qualities to bring to this office.

There is simply no better lawyer and no better person to fulfill the awesome responsibilities of the Solicitor General of the United States than Ted Olson. It is my privilege to support him and advocate his nomination.

I know there are a number of questions people will raise and have raised, but I believe, as Senator SPECTER pointed out in our hearings, we have to see where the beef is, what is the substance of the complaints against him.

One of the issues that came up was that he minimized his involvement in the "Arkansas Project" and that he did not tell the truth before the committee. I have the transcript of the testimony he gave.

This is what happened at the committee. He was sitting right there in the room testifying before us. Senator LEAHY went right to the heart of the matter, as he had every right to do. This was his question: "Were you involved in the so-called Arkansas Project at any time?"

The answer:

Mr. Olson: As a member of the board of directors of the American Spectator, I became aware of that. It has been alleged that I was somehow involved in that so-called project. I was not involved in the project in its origin or its management.

No one found fault with that. That statement has not been disputed to this day. There is certainly no evidence to say otherwise.

He stated:

I was not involved in the project in its origin or its management. As I understand it, what that was a contribution by a foundation to the Spectator to conduct investigative journalism. I was on the board of the American Spectator later on when the allegation about the project was simply that it did exist. The publisher at that time, under the supervision of the board of directors, hired a major independent accounting firm to conduct an audit to report to the publisher and, therefore, to the board of directors with respect to how that money was funded. I was on the board at that time.

Mr. Olson was on the board when they conducted an investigation that the board decided to do.

Mr. Olson continued his answer in Committee:

As a result of that investigation, the magazine, while it felt it had the right to conduct these kinds of investigations, decided that it was not in the best interest of the magazine to do so. It ended the project. It established rules to restrict that kind of activity in the future.

Senator LEAHY interrupted him there. If he did not say enough, Senator LEAHY had every opportunity to ask him more questions. He was still talking about it when Senator LEAHY

interrupted him and stopped him. The transcript shows:

... to restrict activities of the kind in the future and put it—

Senator LEAHY:

And Senator LEAHY asked some other questions about the same matter which Mr. Olson answered and that I do not think have been credibly disputed either. I submit that the man told the truth absolutely, indisputably.

I really believe, as Senator SPECTER said in Committee, we ought to be responsible around here. We ought to be careful about alleging that a nominee for a position such as Solicitor General of the United States is not being honest or is somehow being dishonest about what he says. I do not believe there are any facts to show that. That is why I care about how we proceed, and I am glad an agreement was reached that the matter could come forward.

On the question of Mr. Olson's integrity, we have a number of people who vouch for him. Let's look at these Democrats.

Laurence Tribe, the professor who litigated against him in *Bush v. Gore*, said:

It surely cannot be that anyone who took the prevailing view [in *Bush v. Gore*] and fought for it must on that account be opposed for the position of Solicitor General. Because Ted Olson briefed and argued his side of the case with intelligence, with insight, and with integrity, his advocacy on the occasion of the Florida election litigation—profoundly as I disagree with him on the merits—counts for me as a "plus" in this context, not a minus. If we set *Bush v. Gore* aside, what remains in Ted's case is an undeniably distinguished career of an obviously exceptional lawyer with an enormous breadth of directly relevant experience.

I certainly agree with that. That is from Al Gore's lawyer.

Walter Dellinger, former Solicitor General under President Clinton, said when Ted Olson was at the Office of Legal Counsel he "was viewed as someone who brought considerable integrity to the decision-making."

Beth Nolan, former Clinton White House counsel and Reagan Department of Justice Office of Legal Counsel attorney in a letter said:

[W]e all hold Mr. Olson in a very high professional and personal regard, because we believe that he made his decisions with integrity, after long and hard reflection. We cannot recall a single instance in which Mr. Olson compromised his integrity to serve the expedients of the [Reagan] administration.

Floyd Abrams, esteemed first amendment lawyer, stated in March 2001:

I've known Ted since we worked together on a Supreme Court case—*Metromedia v. San Diego*—20 years ago and . . . I've always been impressed with his talent, his personal decency and his honor. He would serve with distinction as Solicitor General.

Harold Koh, former Clinton Administration Assistant Secretary of State in February of this year:

Ted Olson is a lawyer of extremely high professional integrity. In all of my dealings

with him, I have seen him display high moral character and a very deep commitment to upholding the rule of law.

Robert Bennett, attorney for former President Bill Clinton during a lot of this litigation and impeachment matters also supports Mr. Olson's nomination. He is a well-known defense lawyer and certainly very close to President Clinton. He came to the markup when we voted on this in committee and sat throughout the markup. This is what he wrote to the Committee:

While I do not have any personal knowledge as to what role, if any, Mr. Olson played in the "Arkansas Project" or the full extent of his relationship with the American Spectator, what I do know is that Ted Olson is a truth-teller and you can rely on his representations regarding these matters. . . . He is a man of great personal integrity and credibility and should be confirmed.

So, then-Governor Bush chose a man to represent him in the biggest case in his life. He chose a man who had a reputation of this kind among opposing lawyers, lawyers who do not agree with him politically. That is what they say about him.

He is uniquely qualified for the job, and he has the unique confidence of the President of the United States. This is what we ought to do: We ought to give the President whomever he wants in his administration if we can justify doing so. If there is some serious problem, we have a right to inquire into that. That has been inquired into and no legitimate basis has been developed on which to oppose the nomination.

Then the question is: "Should a nominee be confirmed?" And the presumption is that he should unless there is a problem.

There were a number of "charges" suggested. I will mention briefly that Mr. Olson wrote articles for the American Spectator and received some pay for some of them. He admitted that before the hearings. When he was asked to produce what he published, he submitted those articles to the Committee. Everybody knew that. After the hearing, Senator KENNEDY said he was going to vote for him. He was satisfied. There was no dispute about his involvement with the magazine.

His opponents said Mr. Olson played word games. Mr. Olson clearly responded that he wasn't involved in the management or the origin of this so-called Arkansas Project, but that when he was at dinners and he talked about the public Clinton scandals over dinner. Anybody knows if you are at a luncheon and you are talking, or at a dinner with an editor and he is writing political articles of this kind, you are going to talk about it. But it doesn't mean he originated the project or managed the project in any way, and that is what he said, "I did not do."

With respect to Mr. Olson's representation of David Hale, he plainly said that he was not compensated for that work. He said he had helped Hale from



the beginning, but that he was never paid for it—he never got paid for representing him. He never denied representing David Hale, being asked by another lawyer, I believe he said, to help him. This was supported by the Independent Counsel Ray who has stated that the Shaheen Report on whether Mr. Hale was paid to testify found no evidence of any improprieties here.

With respect to an American Spectator article on Vince Foster's death, Mr. Olson did not write it. He told the magazine employees that he didn't put much stock in it, but it was all right for the magazine to publish it. The First Amendment generally protects the press when it publishes articles on public figures. It is a free country. I do not believe that the magazine was sued over it. Mr. Olson didn't put much stock in it, but if the magazine wanted to publish it, fine. That is what I understood his statement to be. That is very different from the nominee writing the article or submitting it in a brief to a court.

There were questions raised about a chart that he prepared that showed the federal and state criminal offenses that the Clintons could have violated if public allegations were proven in a court of law. He gave the chart to the Committee before we even had the hearing. That was something he had written and produced. We all knew about that.

I would just say this. A man's professional skill, his integrity, is determined and built up over a period of years. We in this body, as Senators, know we can make a speech here and we can misspeak, and we have one of our staff, if they have a little time, go back and read it and correct the record.

A nominee cannot do that. What Ted Olson said, he said under oath. I don't see he made a mistake at all. We never apologize around here. We make mistakes. We misstate facts. I have done it. I try not to. As a former prosecutor, I always try not to misstate the facts. I work at it very hard. I still find when I leave the floor sometimes I have misspoken. But are you going to call a press conference and try to apologize? We just do it and get away with it. This man told the truth. I don't see where he told anything that was a lie.

I know there are some activists who do not want to see the man who handled the Bush v. Gore case confirmed. They don't want to see confirmed a man who gave legal advice to the American Spectator, who thought there was something rotten in Arkansas and went out and investigated it. How many of them went to jail over it? Some of them are still in the bastille, perhaps for crimes they committed that this magazine investigated. What is wrong with that? Isn't this America? I don't see anything wrong with Mr. Scaife giving money, legally, to investigate a stinking mess. That is what we had in Arkansas.

The Independent Counsel investigations and the impeachment were tough times for this country. Those matters are behind us. We are at a point now where we have a new administration that is building its team. It is time that the President be able to have his top constitutional adviser on board, be able to do his duty.

I am glad we can have this debate. Some see this nomination differently. I respect their views. Ultimately, however, there is no dispute based on facts in the record. I am glad this nomination is being moved forward and that we can have an up-or-down vote on it.

I believe Mr. Olson will be confirmed. I think he should be. I am honored to cast my vote for him. I urge others to do so likewise.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I ask unanimous consent that any time used in the quorum call subsequent to this be charged against both sides equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. Mr. President, I congratulate Senator HATCH and Senator LEAHY for bringing the nomination of Ted Olson to be Solicitor General to the floor of the Senate. I am delighted we are going to have a vote on Mr. Olson. I know him well. I think he will be an outstanding Solicitor General not only for this President and this administration but for our country as well.

Mr. Olson's qualifications are beyond reproach. He was an undergraduate at the University of the Pacific and received his law degree from the University of California at Berkeley. He has been a partner at Gibson, Dunn & Crutcher, one of the nation's leading law firms, from 1965 to 1981, and also from 1984 until the present time. He served as Assistant Attorney General from 1981 to 1984, providing legal advice to President Reagan and Attorney General William French Smith and other executive branch officials.

He has handled a lot of very important cases. Probably the best known

case was Bush v. Gore. No matter which side of that case you supported, you had to admire the skill with which he argued a very complicated and, needless to say, very important case. In addition, he has argued numerous other very significant cases before the Supreme Court and other federal and state courts. I will include for the RECORD a highlight of seven of these important cases.

Ted Olson has been on both sides of the courtroom battles. He has defended the Government and counseled the President. As Assistant Attorney General, he dealt with limiting government power as well. In private practice, he has defended private interests against the Government. In his arguments on both sides of the courtroom, he has presented factual cases and positions in both Federal and state courts, arguing for the government and against the Government. That type of experience is almost unequaled in a nominee for Solicitor General.

He will be an outstanding credit to the administration and to the country. His nomination is supported by liberals and conservatives, by individuals such as Robert Bork, Robert Bennett and Laurence Tribe. Different people with different viewpoints have reached the same conclusion I have reached: Ted Olson will be an outstanding Solicitor General, and he should receive our very strong support. I am delighted we will be confirming him as the next Solicitor General of the United States.

I ask unanimous consent to print the list of cases to which I referred in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### LEADING CASES TED OLSON ARGUED

Ted Olson has argued or been the counsel of record in some of the leading cases before the Supreme Court:

*Rice v. Cayetano* (2000)—Counsel of record for the prevailing party in this case in which the Court struck down as a violation of the Fifteenth Amendment. Hawaiian legislation restricting voting in certain elections to citizens based on racial classifications.

*U.S. v. Commonwealth of Virginia* (1996)—Whether Virginia Military Institute male-only admissions policy violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Mr. Olson was counsel of record for the Commonwealth of Virginia and Virginia Military Institute.

*Garcia v. San Antonio Metropolitan Transit Authority* (1985)—Whether the Tenth Amendment's reservation of powers to the states precluded application of the minimum wage and other employment standards of the Federal Fair Labor Standards Act to wages paid by the City of San Antonio to municipal transit workers. Mr. Olson was counsel of record for the United States.

*Immigration and Naturalization Service v. Chadha* (1983)—Striking down as unconstitutional legislative veto devices by which Congress reserved to itself or some component of Congress the power to reverse or alter Executive Branch actions without enacting substantive legislation. Mr. Olson was counsel on the briefs for the United States.



## OTHER LEADING CASES

*Hopwood v. Texas* (5th Circuit)—Holding that University of Texas School of Law admissions policies violate Fourteenth Amendment to the Constitution of the United States. Mr. Olson is counsel of record for students denied admission under law school admission policy which discriminated on the basis of race and ethnicity.

In *Re Oliver L. North* (D.C. Circuit)—Attorneys fee awarded to former President Ronald Reagan in connection with Iran-Contra investigation. Mr. Olson represented former President Ronald Reagan in connection with all aspects of Iran-Contra investigation including fee application.

*Wilson v. Eu* (California Supreme Court)—Upholding California's 1990 decennial reapportionment and redistricting of its congressional and legislative districts. Mr. Olson was counsel to California Governor Pete Wilson.

Mr. NICKLES. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, is it in order for me to speak now on a matter not connected with this nomination?

The PRESIDING OFFICER. It would take unanimous consent.

Mr. STEVENS. I ask unanimous consent to speak for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. STEVENS are located in today's RECORD under "Morning Business.")

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. AL-LARD). Without objection, it is so ordered.

## UNANIMOUS CONSENT AGREEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that all time be yielded back on the motion and the motion be agreed to. I further ask consent that the Senate now proceed to the consideration of the nomination and that the vote occur on the confirmation of the nomination with no intervening action or debate. I also ask unanimous consent that following the vote on the confirmation of the Olson nomination, the Senate then proceed to two additional votes, the first vote on the confirmation of Calendar No. 83, Viet Dinh, to be followed by a vote on the confirmation of Calendar No. 84, Michael Chertoff. Finally, I ask consent that following those votes, the President be immediately notified of

the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. So I understand, the first vote would be on the Olson nomination immediately?

Mr. HATCH. That is correct.

Mr. LEAHY. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The motion was agreed to.

Mr. HATCH. For the information of all Senators, under this agreement, there will be three consecutive rollcall votes on these nominations.

I ask for the yeas and nays on the Olson nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HATCH. I ask unanimous consent it be in order for me to ask for the yeas and nays on the other two votes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. I ask for the yeas and nays on those votes.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

# NOMINATION OF THEODORE BEVRY OLSON, OF THE DISTRICT OF COLUMBIA, TO BE SOLICITOR GENERAL OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the clerk will report the nomination.

The assistant legislative clerk read the nomination of Theodore Bevry Olson, of the District of Columbia, to be Solicitor General of the United States.

Mr. WARNER. Mr. President, I rise today in support of the nomination of a Virginian, Theodore "Ted" Olson, to serve as the Solicitor General of the United States.

Article II, Section 2 of the Constitution provides that the President:

shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court, and all other Officers of the United States. . . .

Thus, the Constitution provides a role for both the President and the Senate in this process. The President has the power to nominate, and the Senate has the power to render advice and consent on the nomination.

In fulfilling the constitutional role of the Senate, I have, throughout my career, tried to give fair and objective consideration to both Republican and

Democratic Presidential nominees at all levels.

It has always been my policy to review nominees to ensure that the nominee has the qualifications necessary to perform the job, to ensure that the nominee will enforce the laws of the land, and to ensure that the nominee possesses the level of integrity, character, and honesty that the American people deserve and expect from public office holders.

Having considered these factors, I have come to the conclusion that Ted Olson is fully qualified to serve as our great Nation's next Solicitor General.

The Solicitor General's Office supervises and conducts all Government litigation in the U.S. Supreme Court. The Solicitor General helps develop the Government's positions on cases and personally argues many of the most significant cases before the Supreme Court.

Given these great responsibilities, it is no surprise that the Solicitor General is the only officer of the United States required by statute to be "learned in the law."

Mr. Olson's background in the law is impressive. He received his law degree in 1965 from the University of California at Berkeley where he was a member of the California Law Review and graduated Order of the Coif.

Upon graduation, Mr. Olson joined the firm of Gibson, Dunn, & Crutcher in 1965, becoming a partner in 1972. During this time, Mr. Olson had a general trial and appellate practice as well as a constitutional law practice.

In 1981, Mr. Olson was appointed by President Reagan to serve as Assistant Attorney General, Office of Legal Counsel in the U.S. Department of Justice. During his 4 years in this position, Mr. Olson provided counsel to the President, Attorney General, and heads of the executive branch departments.

After serving in the Reagan administration, Mr. Olson returned to private practice. He has argued numerous cases before the Supreme Court, including one that we are all familiar with related to this past election and the Florida election results. His vast experience in litigating before the Supreme Court will serve him well as Solicitor General.

Based on this extensive experience in the law, it goes without saying that Mr. Olson is "learned in the law." Mr. Olson is obviously extremely well-qualified to serve as our next Solicitor General.

Mr. THURMOND. Mr. President, I am very pleased to support Mr. Ted Olson today to be Solicitor General.

Mr. Olson is one of the most qualified people ever nominated for this position. He has had an extensive and impressive legal career, specializing in appellate law. He has argued many cases of great significance in the Federal courts, including 15 cases before